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ALYESKA PIPELINE SERVICE COMPANY COVERT OPERATION

DRAFT REPORT

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[1] All transcripts included as Exhibits to the Report are Wackenhut's original transcripts. Alyeska's "enhanced" transcripts, created by Alyeska during the Committee's investigation, as well as the original and "enhanced" videotapes, are included in the general public record.

ALYESKA PIPELINE SERVICE COMPANY COVERT OPERATION

DRAFT REPORT

INTRODUCTION

In July 1991, Charles Hamel [2] informed the Committee that he had been the unwitting victim of an undercover "sting" operation conducted by The Wackenhut Corporation ("Wackenhut") [3] for Alyeska Pipeline Service Company ("Alyeska").[4] Hamel alleged that as part of the sting, agents of Wackenhut's Special Investigations Division posed as concerned environmentalists in order to gain his confidence as well as access to his home and his files. Hamel's files contained information and documents sent to him by confidential and often anonymous sources regarding alleged violations by Alyeska and its Owners of environmental, health and safety laws and regulations. Hamel further alleged that Wackenhut's agents, on Alyeska's and Exxon's behalf, committed numerous crimes and tortious acts against him in an effort to discover his sources and to stop him from providing evidence of Alyeska's viola-

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[2] Hamel is a former independent oil broker who claims that he lost his business after Alyeska supplied him with oil containing excess water. As a result of his dispute with Alyeska, Hamel became one of its chief critics.

[3] Wackenhut is one of the world's largest total security service companies. The company's three principal operating groups, Domestic Operations, Government Services and International Operations, employed more than 45,000 people and had record sales of over one-half billion dollars in 1990. Wackenhut's Special Investigations Division and Wackenhut subsidiaries American Guard and Alert, Inc. (which protects the Trans-Alaska Pipeline) and Wackenhut of Alaska, Inc. (which provides security at the North Slope oil fields and other businesses in Alaska) are included in its Domestic Operations Group. Its Government Service Group has contracts with the Department of Energy for security at major nuclear sites and also with the Departments of Labor and the Army for other security services. [Appendix to "Alyeska Pipeline Service Company Covert Operation," Oversight Hearings before the Committee on Interior and Insular Affairs, November 4, 5 and 6, 1991, Serial No. 102-13 ("hearing record"), p. 342.]

[4] Alyeska operates the Trans-Alaska Pipeline as the designated agent for the seven companies which possess the Federal right-of-way granted under the Trans-Alaska Pipeline Authorization Act of 1973. The seven companies in the consortium are: British Petroleum ("BP"); Exxon; ARCO; Mobil; Amerada Hess; Phillips Petroleum; and Unocal. The seven are collectively referred to herein as the "Owners."

tions to government officials, including members of this Committee.

On August 7, 1990, Committee Chairman George Miller wrote to Alyeska, Exxon and Wackenhut expressing concern that the surveillance of Hamel may have been for the purpose of disrupting and compromising a known source of information for the Committee's continuing investigation of the *Exxon Valdez* oil spill and Alyeska's operations in Alaska. The Chairman informed Alyeska, Exxon and Wackenhut that the Committee was investigating Hamel's allegations and requested the production of numerous documents. During the following months, the Committee received thousands of pages of documents which it reviewed to determine the nature and purpose of the surveillance activities.[5]

Alyeska admitted hiring Wackenhut, but asserted that it only intended the undercover operation to find out how and by whom allegedly confidential, privileged and proprietary company documents were being "stolen." Alyeska explained that it was aware of numerous unauthorized leaks of documents which it considered corporate "assets" and which contained "secrets" regarding its operations and legal affairs. Alyeska said it was concerned that these and other documents could be getting into the hands of its competitors, terrorists and saboteurs. Alyeska told the Committee that it focused on Hamel because he had bragged about obtaining Alyeska's documents and was allegedly using the documents and other confidential and proprietary information to extort money from Alyeska and Exxon.

Alyeska has denied that Wackenhut's covert activities were illegal or that they were designed to do anything more than find and plug unlawful leaks. Alyeska has also denied that it ever intended to prevent Hamel from lawfully obtaining and providing this Committee with information about Alyeska's activities, the *Exxon Valdez* oil spill or any alleged violations of law or regulation.

The primary focus of the Committee's investigation was whether Alyeska's covert operation was an unlawful attempt to impede the Committee's receipt of information about Alyeska's operations and alleged environmental violations. However, other issues were raised which, while not directly relevant to the main issue, nonetheless merited the Committee's attention.

This report addresses all issues raised during the investigation with the exception of the substantive environmental issues raised in Black's tape-recorded conversations with Hamel. In addition, all documents obtained by the Committee during its investigation are included in an appendix to this report, the appendix to the oversight hearings held November 4-6, 1991 or are otherwise available for public inspection. We note, however, that purely personal information, *e.g.*, social security numbers and certain information con-

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[5] Documents were produced to the Committee by Alyeska and Wackenhut. Exxon informed the Committee that it was not in possession or control of any documents regarding this matter and that it had neither sponsored, planned nor implemented any covert surveillance of Hamel. Although several Wackenhut employees told the Committee that they had been advised by their superiors that Exxon was paying for the operation and was benefitting from the information obtained, no documentary evidence has been uncovered that Exxon was involved in or aware of the Wackenhut operation prior to August 1990. [Appendix to hearing record, pp. 281-300, 323-327.]

tained in credit reports and telephone records, have been omitted from the public record.

SUMMARY OF CONCLUSIONS

It appears from the record that while Alyeska's covert activities may have been designed in part to identify and plug leaks within Alyeska, that was not the only goal. From the beginning, the activity centered on Hamel, who was well known in Alaska not as a pipeline terrorist, industrial saboteur or Alyeska's business competitor, but as Alyeska's most vocal and effective critic and conduit of information from Alyeska's employees to state and federal officials about serious allegations of environmental wrongdoing. Alyeska's Wackenhut agents watched Hamel's home, picked through his trash, obtained his personal credit, banking and long-distance telephone records, as well as information about his divorce, his family, his ownership of property, his business disputes with Exxon, and virtually all his activities in the environmental arena.

Wackenhut also gathered information on and extended its covert operations in varying ways to individuals and organizations also known to be Alyeska critics, including the participants in a lawful demonstration against Alyeska and its role in the 1989 *Exxon Valdez* oil spill; Trustees for Alaska, a public interest law firm; Dan Lawn, a State of Alaska Department of Environmental Conservation official; Dr. Riki Ott, a Cordova marine pollution expert on the board of Cordova District Fishermen United; and Lewis "Frank" DeLong, a prominent oil industry commentator and Fairbanks radio talk show host. It does not appear that any of those individuals is or was ever suspected by Alyeska of being a pipeline terrorist, industrial saboteur or business competitor.

Furthermore, the documents produced to the Committee by Alyeska reveal that Alyeska and its Wackenhut agents sought to create an environment which they believed would stop the flow of damaging information from Alyeska's employees through Hamel to state and federal authorities, including this Committee, and compromise those authorities' ability to use any information obtained through Hamel. In fact, evidence provided by Alyeska shows that the Wackenhut agents considered it a "goal" of their investigation to have both Hamel and Chairman Miller indicted for alleged solicitation and receipt of "stolen" Alyeska documents.

Based upon interviews with former Wackenhut employees, sworn testimony, and review of documents, videotapes and audiotapes obtained from the parties, the Committee has concluded that:

(1) Alyeska fully intended not only to find Hamel's inside sources of confidential documents, but also to interfere with the Committee's ongoing investigations of Alyeska's operations by disrupting and compromising a known source of information to the Committee and attempting to learn the nature and content of his communications with the Committee;

(2) that Alyeska sought to blunt the effect of damaging disclosures about its misdeeds by collecting and maintaining information about its critics, including the Chairman of this Committee, which Alyeska believed might be useful to stop or at least discredit them; and

(3) that Alyeska and Wackenhut obstructed the Committee's investigation of the undercover operation by withholding and possibly destroying and altering key documents and records of the covert activities.

The Committee believes that these actions constitute violations of 18 U.S.C. section 1505, which prohibits the obstruction of a congressional inquiry. [See discussion on pp. 74–82 and 83–86.]

The Committee has concluded that to the extent documents and information provided to government officials concerned matters of public health, safety and the environment, they were not "trade secrets" and "corporate assets." Since Congress has passed laws encouraging the disclosure of such information to government officials, the Committee has also concluded that neither Hamel nor any government official to whom he may have provided the information or documents were in possession of "stolen" property. Furthermore, the Committee has concluded that the mere fact that such information appears in documents created by or for Alyeska's attorneys does not by itself make its disclosure a crime. [See discussion on pp. 51–57.]

The Committee has also concluded that there is no evidence that Hamel is an extortionist. Alyeska claimed that Hamel threatened to expose its confidential and proprietary documents and information in order to coerce it to pay him money for his silence and his dismissal of lawsuits against Alyeska and Exxon. However, Alyeska's evidence of the "extortion" reveals that Hamel's attorneys merely participated in settlement negotiations during the ordinary course of litigation in which they set forth the terms upon which Hamel would be willing to settle his claims. The Committee does not believe that these settlement terms were "threats" which constitute extortion under any reading of federal or state law. [See discussion on pp. 59–62.]

The Committee has further concluded that the Wackenhut agents engaged in a pattern of deceitful, grossly offensive and potentially, if not blatantly, illegal conduct to accomplish their objectives. The hearing testimony and the legal opinions submitted by Alyeska's and Wackenhut's attorneys defending the legality of these tactics are nothing more than vain attempts to legitimize undeniably egregious violations of personal privacy committed by Alyeska's Wackenhut agents and to divert attention from Alyeska's disastrous campaign to silence its critics.

Specifically, the Committee believes that in addition to potential civil invasions of privacy, federal and state criminal laws may have been violated by:

(1) obtaining AT&T proprietary telephone toll records without AT&T's knowledge or acquiescence;

(2) obtaining private credit and financial reports under false pretenses and without permission of the individual(s) whose records were obtained;

(3) secretly recording private conversations in Florida without consent of all parties to the conversations;

(4) secretly recording private conversations in Virginia for the purpose of committing a criminal or tortious act;

(5) possessing and transporting interstate, devices designed primarily for the purpose of surreptitious interception of wire, oral or electronic communications;

(6) obtaining under false pretenses the free use of valuable computer software; and

(7) permanently removing documents from Hamel's home which did not belong either to Wackenhut or to its client, Alyeska.

[See discussion on pp. 62–73.]

Although it appears that Alyeska left most of the day-to-day undercover work to Wackenhut, the Committee believes that Alyeska must nonetheless bear great responsibility for the conduct of the operation. The Wackenhut agents regularly reported their activities to Alyeska, which must have known of and approved the investigative techniques employed. Moreover, regardless of whether Alyeska had specific knowledge of or direct legal liability for the investigative techniques, it was Alyeska which set the tone and the goals of the undercover operation and must, therefore, accept the consequences resulting from the misguided effort. [See discussion on pp. 73–74.]

Even if Wackenhut's investigative techniques were within the law, they were beneath the standards expected of U.S. corporations.

> I don't think it's in the American tradition. It's a little ominous. You don't use private forces to investigate people in America.

[Exhibit 1, quoting Senator Warren Rudman. Also see Exhibit 1 for similar comments by President Bush: "I don't think that's particularly American."]

The Committee has also concluded that Alyeska's Owners must also accept responsibility for the covert operation and its coverup. At the very least, Fred Garibaldi of BP Pipeline, as Chairman of the TAPS Owners Committee, knew or should have known from the beginning that Alyeska had undertaken a highly questionable covert investigation which involved federal and state government officials who regulate and oversee Alyeska and its Owners. His failure to take early action to stop or at least tightly control the operation and his presumed failure to inform the other Owners places the ultimate responsibility on his shoulders. [See discussion on pp. 86–87.]

In addition, even after all the Owners finally learned of the covert operation and appropriately ended it, they inappropriately took steps to cover it up rather than deal with the troubling allegations of environmental, health and safety violations discussed at length on the surveillance videotapes and transcripts. While acknowledging that many of Hamel's background facts were accurate, the Owners chose to reject his conclusions without investigation until it was clear that they would be made public during the Committee's hearings. The Committee believes that the failure to take affirmative action to protect the public from harm was an abrogation of the Owners' responsibilities under the law. [See discussion on pp. 87–89.]

FACTUAL BACKGROUND

COMMITTEE ACTIVITIES

The Committee on Interior and Insular Affairs has broad jurisdiction over operations of the Trans-Alaska Pipeline System ("TAPS"). In 1973, the Committee had a central role in the enactment of the Trans-Alaska Pipeline System Authorization Act ("TAPAA", P.L. 93-153). TAPAA provided the authority for the Secretary of the Interior to grant, on an expedited basis, a right-of-way across Federal public lands for the construction of the Trans-Alaska Pipeline.

The Committee has been active in monitoring TAPS and in Alaska oil and gas issues generally. In the 100th Congress, the Subcommittee on Water and Power Resources, then chaired by Congressman George Miller, held an extensive series of subcommittee hearings on issues related to legislation proposing to open the coastal plain of the Arctic National Wildlife Refuge ("ANWR") to oil and gas development.[6] In the context of the ANWR hearing process, the Committee aggressively investigated a wide variety of matters related to oil and gas development in Alaska.[7]

In the 101st Congress, consideration of ANWR development proposals was abruptly halted by the March 24, 1989 *Exxon Valdez* oil spill. In early April, Chairman Miller toured the Prince William Sound spill area and strongly criticized the spill clean up effort by Alyeska and Exxon. In May, Chairman Miller returned with other Committee members to have a town meeting in Cordova, conduct a field inspection of the spill area and the Alyeska terminal facilities, and hold two days of hearings in Valdez. Alyeska representatives testified at the May 7th hearing and were confronted by the Committee for Alyeska's failure to adequately respond to and clean up the oil spill.[8]

Alyeska's 1990 covert operation was conducted during the period of the Committee's investigation of the *Exxon Valdez* oil spill and operations of TAPS.[9] In particular, three categories of activities were known to Alyeska:

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[6] See: "Arctic National Wildlife Refuge (ANWR)" hearings before the Subcommittee on Water and Power Resources (Serial No. 100-52, Parts I to VIII). Alyeska's owner companies were among the most vocal advocates of developing ANWR. Any oil produced from ANWR would be transported by TAPS, potentially extending the useful life of the pipeline significantly.

[7] See, *e.g.*: "Comparison of Actual and Predicted Impacts of the Trans-Alaska Pipeline System and Prudhoe Bay Oilfields on the North Slope of Alaska." Prepared by the U.S. Fish and Wildlife Service in December, 1987. See also: "Consideration of Proposed Alaska Land Exchanges Should be Discontinued" (GAO/RCED-88-179) (September 1988) and "Chandler Lake Exchange Not in the Government's Best Interest" (GAO/RCED-90-5) (October 1989). Both of these GAO reports concerned oil and gas issues raised in the subcommittee hearings on ANWR.

[8] See: "Investigation of the Exxon Valdez Oil Spill, Prince William Sound, Alaska", Oversight Hearings before the Subcommittee on Water, Power and Offshore Energy Resources (Serial No. 101-1, Part I). The subcommittee also held *Exxon Valdez* related hearings on oil spill clean up technology (July 18, 1989), status of the Exxon spill cleanup (July 28, 1989), and oil spill and natural resource damage assessment issues (March 22, 1990 and April 24, 1990) (Serial No. 101-1, Parts 2, 3 and 4). In addition, the subcommittee held hearings on "Manipulation of Science and the Regulatory Process Affecting Oil and Gas Development in Alaska" on May 3, 1990 (Serial No. 101-32) and on "Strategies for Energy Independence: Alaska Natural Gas" on September 19, 1990 (Serial No. 101-34, Part II).

[9] Alyeska's Manager of Corporate Security, J. Patrick Wellington told an attorney for the Owners that there were no specific investigations of Alyeska during the time period of the Wackenhut investigation. [Appendix to hearing record, p. 650.]

1. *TAPS Reform Legislation*—After the Valdez hearings and a staff on-sight inspection of the terminal in August 1989, Chairman Miller introduced H.R. 3277, the "Trans-Alaska Pipeline System Reform Act", in September 1989. The bulk of this legislation, which increased liability limits, clarified Alyeska's oil spill response duties, and authorized a comprehensive government audit of Alyeska operations, was incorporated into the House-passed version of the oil spill legislation (H.R. 1465) in November 1989 and ultimately was enacted into law in August 1990 as title VIII of the Oil Pollution Act of 1990. Alyeska testified and lobbied against the TAPS Reform Act.[10]

2. *General Accounting Office ("GAO") Investigation of Alyeska*—To supplement the limited subcommittee staff resources, Chairman Miller requested a comprehensive GAO investigation of Alyeska operations in April 1989. The majority of GAO's work was done in 1990 and a final report, which highlighted a variety of concerns about Alyeska operations and inadequate governmental regulation, was issued in July 1991.[11]

3. *Hearing on Alyeska Safety and Environmental Issues*—As part of the subcommittee investigation of the *Exxon Valdez* oil spill, on March 29, 1990, a specific hearing was held focusing on corrosion and environmental issues related to operation of TAPS. Alyeska President Jim Hermiller testified at this hearing.[12] Shortly before the hearing, Chairman Miller requested and, under threat of subpoena, received documents from Alyeska which contained evidence of both Alyeska's and its Owners' clear knowledge of Alyeska's lack of oil spill preparedness prior to the *Exxon Valdez* oil spill and their deliberate inaction.[13]

JANUARY 20, 1990—"SCOTTISH EYE"

On January 20, 1990, the British television program *Scottish Eye* aired "Slick Operators," a film criticizing Alyeska's operation of the oil terminal at Valdez, Alaska, particularly the failure of its Oil Spill Contingency Plan. The film focused on BP, as Alyeska's principal owner, charging that by the high standards it applies to

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[10] See: "Trans-Alaska Pipeline System Reform Act of 1989," hearing before the Subcommittee on Coast Guard and Navigation of the Committee on Merchant Marine and Fisheries (Serial No. 101-43), September 26, 1989.

[11] See: "Trans-Alaska Pipeline: Regulators Have Not Ensured that Government Requirements Are Being Met", GAO/RCED-91-89 (July 1991).

[12] See: "Investigation of the Exxon Valdez Oil Spill, Prince William Sound, Alaska", Oversight Hearing on "Corrosion and Environmental Issues Related to Operations of the Trans-Alaska Pipeline System" by the Subcommittee on Water, Power and Offshore Energy Resources (Serial No. 101-5), March 29, 1990. Prior to the hearing, Chairman Miller made *Congressional Record* comments on Alyeska's environmental operations (July 20, 1989) and Alyeska's pipeline corrosion problems (February 7, 1990).

[13] In February, 1990, Chairman Miller raised concerns in correspondence with Attorney General Thornburgh about efforts by the Bush Administration to reach a settlement, over the State of Alaska's objections, of claims stemming from the *Exxon Valdez* oil spill. Chairman Miller strongly objected to immunity for Alyeska for damages set forth in the 1991 proposed settlement agreed to by the Justice Department and the State of Alaska. In a April 8, 1991 letter submitted in the public comment period to the Federal district court, Chairman Miller detailed the evidence received by the subcommittee that Alyeska's Owners knew in 1988 that Alyeska could not effectively respond to an oil spill in Prince William Sound, failed to make necessary improvements, and secretly decided not to respond to a spill in the manner prescribed in Alyeska's government approved contingency plan. The Federal district judge agreed that immunity for Alyeska was not "an appropriate provision for a plea agreement in connection with this case." In the revised *Exxon Valdez* settlement which was approved by the court in October, 1991, Alyeska did not receive blanket immunity from liability.

the operation of Europe's largest oil terminal at Sullom Voe in the Shetland Islands, it should have known that the Valdez terminal was a disaster waiting to happen.

[Exhibit 2.[14]] During the broadcast, host Jonathan Wills read from an Alyeska memo written three months after the *Exxon Valdez* disaster (the "Promises Memo") in which a company lawyer compared Alyeska's oil spill response to earlier Alyeska promises that its operations in Prince William Sound and Valdez would be the safest in the world.

In February 1990, at a meeting of Alyeska and its Owners, Fred Garibaldi, then president of BP Pipeline and chairman of the Owners' Committee, played a videotape of the *Scottish Eye* program. During discussions about the program, the Owners expressed concern over the disclosure of a confidential attorney work-product document.

In response to the Owners' concerns, Alyeska president Jim Hermiller asked J. Patrick Wellington, Alyeska's Manager of Corporate Security, to investigate leaks of confidential company documents. A February 22, 1990 memo from Roger Iverson, Wellington's assistant, indicates that during the prior three years there had been three known information leaks in addition to the Promises Memo:

(1) November 1987—Hamel reportedly quoted to the press portions of private conversations between Alyeska management employees [15];

(2) May 1988—a simplified, hand-drawn diagram of Alyeska's ballast treatment system was provided to Trustees for Alaska [16];

(3) October 1989—Alyeska operations manuals which the U.S. Environmental Protection Agency ("U.S. EPA") sent to Hamel addressed "in care of Trustees for Alaska" were discovered in the trunk of an impounded car.[17] [Appendix to hearing record, pp. 669–674.]

THE "STING"

Alyeska Hires Wackenhut

Wellington determined that a covert operation would be the best way to stop the leaks. [Exhibit 3, p. 372.] Thus, in mid-February 1990, Wellington spoke with Alan B. Bernstein, Wackenhut's Vice President for Domestic Operations, about conducting a surreptitious investigation. Bernstein referred Wellington to Wayne B. Black, the Director of Wackenhut's new Special Investigations Di-

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[14] Among those interviewed for the broadcast were Dan Lawn, an official of the Alaska Department of Environmental Conservation ("ADEC"), and Congressman George Miller.

[15] A November 24, 1987 Alyeska Security Case Report attached to Iverson's memo to Wellington discloses that Alyeska reviewed its 1987 records of calls to Maryland and Virginia to determine whether any Alyeska employee called Hamel from an Alyeska phone. No calls to Hamel's number were found.

[16] A June 30, 1988 memo to Wellington indicates that Alyeska strongly suspected its employee, Robert Scott, of making the simplified diagram. However, a handwriting analysis proved inconclusive. [Appendix to hearing record, pp. 670–671.]

[17] Hamel had provided the documents to EPA. They were being returned to Hamel when they somehow turned up in the trunk of the impounded car.

vision ("SID").[18] [Exhibit 3, p. 390.] They scheduled a meeting for March 7, 1990 at Wackenhut's Coral Gables, Florida office.

Prior to the meeting, Wellington provided Black with preliminary background information including:

(1) the February 22, 1990 memo from Iverson regarding "leaks";

(2) numerous articles about the oil industry in Alaska, the *Exxon Valdez* oil spill, pipeline corrosion and the Arctic National Wildlife Refuge ("ANWR");

(3) an August 1989 *Newsweek* article regarding a "leaked" Exxon memorandum and Congressman George Miller's call for hearings regarding the contents of the memorandum;

(4) a February 23, 1990 memorandum from Wellington to Black regarding Alyeska employee, Robert Scott, whom Wellington stated "is top of our list as possible leak";

(5) a February 23, 1990 memo from Wellington to Black enclosing part of a letter from Hamel to Eldon Means of ARCO Alaska, Inc. and a letter from Hamel to Robert Horton, Vice Chairman of BP which stated: "Note his remarks about having early information regarding oil spill drill";

(6) a memo identifying Hamel as "the person who is getting our information" and attaching a newspaper article describing Hamel's active involvement providing information damaging to Alyeska to the U.S. EPA, Alaska DEC and the U.S. Congress [19];

(7) a memo identifying Riki Ott as "a pain in the ass" who is "very active in all Alyeska issues. Right now is spending a lot of time in our state capitol working the legislative scene. I think she is also receiving inside info from us." Attached to the memo was a newspaper article describing Ott's activities and credentials and a February 23, 1988 memo from Iverson describing his investigation of Ott.[20]

[Appendix to hearing record, pp. 661–680; Exhibits 6, 7.] A diagram of the "preliminary information" provided by Alyeska was included in Wackenhut's first report of its investigative activities. [Appendix to hearing record, p. 449.] [21]

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[18] Black is a former Metro Dade County police officer who worked on special assignment to the U.S. Drug Enforcement Agency before moving to the Dade County State Attorney's office as a supervisor in its investigations unit. Black gained local notoriety when terminated by the State's Attorney. [Exhibit 4.] After his termination, Black became a private investigator, first in the firm Riley, Black & Kiraly and in late 1988, in his newly formed Wayne Black & Associates. He joined Wackenhut approximately one year later on October 1, 1989. Although Black has stated on several occasions that his firm was "purchased" by Wackenhut, George Wackenhut testified that Wackenhut "acquired" Black's firm, but no money changed hands. [Exhibit 5; hearing transcript p. 25; appendix to hearing record, pp. 302 and 329.] Black was brought in by Wackenhut to head the newly formed SID. In or about September 1991, after the Committee initiated its investigation, Wackenhut promoted Black from director of the SID to vice president of the Investigations Division.

[19] The article states that "Hamel captured headlines when he filed a complaint with the Alaska Public Utilities Commission charging Alyeska with selling watered-down oil. . . . He readily admits he wants the oil companies to reimburse him for the $12 million or so he thinks he is owed. Until that happens, Hamel says, he will continue to call on his growing network of Alyeska employees and oil industry sources to feed to government authorities what he believes is evidence of environmental wrongdoing by Alyeska."

[20] Iverson's investigation included contacting professors at schools Ott attended and obtaining copies of her master's thesis and doctoral dissertation. Despite Alyeska's obvious interest in including Ott in the covert operation, there is no other information about Ott in the files produced to the Committee.

[21] The diagram lists those, including Congressman George Miller, whom Alyeska believed were obtaining information about Alyeska from Hamel. Additional diagrams were created for

Continued

Wellington also set up a covert billing system for the Wackenhut investigation. He authorized Donald L. Evans, president of American Guard and Alert ("AG&G"), the Wackenhut subsidiary which guards the pipeline for Alyeska, "to enter into a third party agreement on behalf of Alyeska Corporate Security for The Wackenhut Corporation to perform specialized investigative services as requested by the Manager of Corporate Security." [Exhibit 8.] Wackenhut was to bill AG&G which would then include the charges for the covert operation "in the TAPS/3105 monthly billing to Alyeska." [Exhibit 8.]

In fact, Black sent bills to Evans on a one-page memorandum listing only the total amounts billed during that billing period for "investigative services" and "expenses." [Exhibit 9.] No details were included in Wackenhut's invoices to AG&G regarding either the services rendered or the expenses incurred. Nor did AG&G's bills to Alyeska include any detail regarding the Wackenhut services and expenses. [Exhibit 10.] The covert operation was billed to Alyeska simply as two one-line items on the monthly AG&G bill for: "The Wackenhut Corp. Investigation Service" and "expense reimbursements." [22] [Exhibit 10.]

However, Black did prepare detailed invoices containing full descriptions of each investigator's daily activities and expenses for each monthly billing period. The originals of those invoices were sent to Wellington for his information regarding the work done during the covert operation.[23] Wackenhut apparently kept at least two copies for its own records. One was kept in a locked file safe; only Black, Lund and a few other SID employees knew the combination. [Appendix to hearing record, p. 340.] Another was kept in the SID "billing book." [Executive session testimony, pp. 81–83.] A third copy may have been kept in the investigative file.[24] [Exhibit 13.]

Alyeska's payment route was also sometimes circuitous. Alyeska paid the bill for Wackenhut's services as part of their payment to AG&G for pipeline security. [Exhibit 14.] AG&G then paid the amount owed for Wackenhut's services to the Wackenhut Corporation or, at least on one occasion, to Wackenhut of Alaska, Inc., the

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Hamel's "associations" and the perceived "information flow" from Alyeska through Hamel to Congressman Miller, the Committee and back again to Alyeska. [Appendix to hearing record, pp. 450, 451.]

[22] The monthly AG&G bill to Alyeska for pipeline security during that period ranged from $447,000 to as much as $759,000. Wackenhut's billings for the covert operation were only a small fraction of that amount. [Exhibit 9.] As computed from the amounts listed on the invoices produced, Wackenhut's charges for the entire operation, including some attorney's fees, totalled approximately $290,000. George Wackenhut testified that amount was "less than one-fifth of one percent of Wackenhut's entire gross revenues for the year 1990." [Hearing transcript, p. 16.] Wackenhut investigator Contreras stated that she was informed the cost was actually in excess of $1 million. [Appendix to hearing record, p. 326.] The Committee has not uncovered evidence supporting the $1 million figure.

[23] Black also kept in close touch with Wellington by telephone and telefax detailing each aspect of the operation and each contact with Hamel as they occurred.

[24] Wackenhut and Alyeska initially produced copies of the detailed invoices for only three months of the March 1990–April 1991 period. [Exhibit 11.] They informed the Committee that all copies of each of the remaining monthly invoices could not be located after an extensive search. In addition, Wackenhut informed the Committee that it was unable to retrieve the missing invoices from computer disks which served as backups for the Wackenhut SID billing system. However, on June 18, 1992, Wackenhut produced what is presumably all the missing detailed invoices claiming that they had been "found yesterday at approximately 4:45 PM in a box that was delivered from our dead record storage area." [Exhibit 12.]

subsidiary which provides security for the North Slope oil fields.[25] [Exhibit 15 [26].] Presumably, the payment ultimately reached Wackenhut's Miami headquarters.

At the March 7 meeting, Wellington, Black and his associates Rich Lund [27] and Gary Crep discussed implementing an undercover surveillance operation targeting Hamel, Scott and others identified as having obtained documents or information from inside Alyeska.[28] Black also provided Wellington a written opinion regarding the impact of the federal Whistleblower Protection Act, which Black concluded protects employees from termination for disclosure of non-proprietary information to anyone, and for disclosure to a government agency of even proprietary information.[29] [Appendix to hearing record, p. 482.]

The Ecolit Group

Wellington and Black decided to create a phony environmental litigation support group in order to gain their targets' confidence and facilitate their undercover surveillance plan. The Ecolit Group ("eco" for ecology and "lit" for litigation) was described in a brochure designed by Lund as a group.

> . . . formed a responsible group of individuals dedicated to the preservation and proper management of this planet. Toward that end, we are conducting specific and selected research to assist organizations in dealing with oil companies and other [sic] who have demonstrated little regard to [sic] live in sustained harmony with our planet's life-support systems.
>
> * * * * *
>
> Our main objective, through litigation in every Court available, is the maintenance of essential ecological precoces [sic] and life support systems, the preservation of genetic diversities and the sustainable utilization of species and ecosystems.

[Exhibit 17.]

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[25] It is not clear why Wackenhut of Alaska was involved in the payment. The Committee received no evidence that the invoices or any part of the charges for services or expenses were billed through Wackenhut of Alaska.

[26] The Committee received copies of only two of the AG&G checks issued to pay the undercover bills and, therefore, does not know to whom the remaining checks were issued.

[27] Lund worked with Black at Wayne Black & Associates and made the move to Wackenhut with Black in October 1989 as an "independent contractor." According to George Wackenhut, Lund is hired by Wackenhut only "when needed." [Hearing transcript, p. 27.] However, Lund has his own office in the SID and apparently works there full time. Lund's expertise is in "electronic counter-measures and other electronic highly sensitive type of work." [Hearing transcript, p. 30.]

[28] Also in attendance during at least part of this meeting were Bernstein; George Wackenhut, Chairman of the Board; Richard Wackenhut, President; and James Rowan, then Wackenhut's General Counsel. [Exhibit 3, p. 391.] Wellington has testified that the purpose of the meeting was to explain to the Wackenhut Chairman and President his general purpose and guidelines for the investigation. Although the meeting took a full day, Wellington testified that they did not go into any detail about how the investigation would be handled. [Exhibit 3, pp. 421-433.]

[29] Wackenhut prepared a summary of time reports for the undercover operation which indicates that Black also called "Fisher and Phillips re Whistle Blower info" on May 21, 1990. [Exhibit 16, p. 17.] The Committee does not know whether Black also consulted Fisher and Phillips prior to issuing his written opinion to Wellington on March 7, 1990. There is no evidence that Black consulted Wackenhut's legal department on any aspect of the covert operation.

Black, alias Wayne Jenkins, Ph.D., posed as Ecolit's research director. Lund, alias John Foxx, was its technical consultant. Crep used his own name and apparently played a relatively minor role.[30] Initially, Ecolit had a small, sparsely furnished office in the Coconut Grove area of Miami, Florida equipped only with a desk and chair, one telephone with answering machine, a sofa and end table, some environmental posters, and Ecolit's own letterhead and brochure. [Appendix to hearing record, p. 331.]

Beginning in early April 1990, when that office was fully operational, Wackenhut investigators were assigned to spend time in and make calls to the office to make it appear that Ecolit was actually doing business. They relayed recorded messages from Hamel to "Wayne Jenkins" and reviewed the *Anchorage Daily News* for articles involving "Hamel, Alyeska, Exxon, or any other . . . oil companies." [Appendix to hearing record, p. 332.] Although Hamel never visited the Florida office, Black initially anticipated that he would.

Telephone Toll Records

During the first week of the investigation, utilizing what he called "normal commercial sources," Lund began purchasing AT&T's computer records of the long distance calls ("telephone tolls") made from Hamel's Alexandria, Virginia home.[31] [Exhibits 19, 20.][32] Lund informed Black that his source for these records was Ron Eriksen, a private investigator in Arizona whom Lund found through Investigator's On-Line Network ("ION").[33] [Exhibit 19.] Lund told Black that Eriksen's brochure stated that the information came from "public and legally obtainable sources." [Exhibit 19.] Lund did not provide a copy of Eriksen's brochure or explain what those public and legally obtainable sources were. ION's brochure does not contain any such statement. [Exhibit 21.[34]]

Prior to writing the September 1991 memo, Lund had told lawyers reviewing the undercover operation that his source for the toll records was "a company that contracts with the Virginia telephone company to investigate fraud against the telephone company." [Appendix to hearing record, p. 581.] It is not clear whether this is a reference to Eriksen or to another source Lund used. However, Mr. W.F. Brundage, Jr., Vice President and General Counsel for C&P Telephone of Virginia has informed the Committee that C&P Telephone has no record of any relationship with Eriksen. In fact, Brundage and C&P attorney Douglas McCollum stated that C&P does not contract with private investigators or outside companies to

[30] Crep's time records indicate that he did initial background research on the history of "oil drilling in Alaska." [Exhibit 18.] He also participated with Lund in the Valdez "sting." [See, discussion on pages 22-24.]

[31] The records contain a declaration that they are "AT&T Proprietary" and are to be used only pursuant to company instructions.

[32] Lund also obtained telephone tolls on a Waterbury, Connecticut phone listed in Hamel's name and, later, on Hamel's father-in-law's Seattle, Washington phone.

[33] The Committee has confirmed that Eriksen was once an investigator listed in the ION network in Arizona, but is not currently in business. The telephone number listed in Lund's memo to Black is out of service and Eriksen no longer uses the drop-box address. The Committee was informed by the Arizona Department of Public Safety that Eriksen is not and never has been licensed as a private investigator in the state of Arizona. His Arizona driver's license lists the same box-drop address used for his business.

[34] Although Lund's memorandum states that ION is "Investigators On-Line Network," the only ION currently listed in Arizona is "Investigative Open Network."

investigate toll fraud and does not sell or otherwise provide its customers' toll records to anyone without a court order.[35]

Lund continued to obtain Hamel's Virginia telephone tolls until May 1990, when he was suddenly unable to obtain them apparently because Hamel had switched from AT&T to another long distance telephone company. [Exhibit 24.] Lund continued to obtain telephone tolls on other AT&T phone numbers through July 1990.[36]

Using the telephone tolls, Lund identified the names of four persons Hamel had called who were believed to be "affiliated" with Alyeska and, were therefore "suspects" in the investigation: Robert Scott, Kenneth Adams, Daniel Lawn and Price Ahtna. [Exhibit 25.] Lund obtained telephone tolls on Scott's Valdez, Alaska home phone. [Exhibit 26.] However, the files produced to the Committee do not contain telephone tolls for Adams, Lawn and Price Ahtna.[37]

Nor do the files produced to the Committee contain telephone tolls or any other information obtained by Wackenhut about Ott despite the appearance of her telephone number on Hamel's toll records and Alyeska's obvious interest in her activities as a suspected recipient of Alyeska information and a lobbyist against Alyeska's interests. Furthermore, the files do not contain information about any of the more than 30 other suspected sources, including Don M. Rotan, a former Alyeska employee, and William See, an Alyeska engineer, both affirmatively identified by Black as "sources to Hamel." [38] [Appendix to hearing record, p. 450; Exhibits 24, 28.]

It does appear, however, that Lund obtained telephone toll records for Frank DeLong, a well-known oil industry commentator with a daily radio talk show in Fairbanks, Alaska. [Exhibit 29.] DeLong's number appears on Hamel's long-distance records, although Alyeska did not specifically identify him as a "suspect" in the theft of documents. Lund also obtained the toll records for Lois Simpson, secretary to Alyeska's General Counsel. She was initially considered a "suspect," but was later determined not to have been the source of leaks to Hamel. [Exhibit 30, 7/30/90.] Lund's time records indicate he obtained telephone tolls on an area code "907 business." [Exhibit 30, 3/16/90.] He also appears to have obtained tolls on "fax numbers." [Exhibit 30, 3/28/90.][39]

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[35] Lund apparently kept receipts for his payments to Eriksen "inside of envelopes which were taped shut." [Exhibit 22.] Presumably Lund gave Wackenhut copies of his receipts when he requested reimbursement for his expenses. However, Wackenhut has informed the Committee that it is not aware of any such envelopes and that it has produced all receipts in its possession or control. [Exhibit 23.] Neither Wackenhut nor Alyeska has provided the Committee with receipts for any of Lund's telephone toll payments.

[36] Former Wackenhut employee, Mercedes Cruz, produced a list of "Special Services" she typed for Lund listing his charges for obtaining telephone tolls. [Appendix to hearing record, p. 481.]

[37] While the file contains some further information about Scott, and contains a credit report on Lawn, it contains no additional information on Lawn and no information at all on Adams and Price Ahtna despite Black's memo to Wellington which states that "backgrounds *are being* developed on each of these four." [Exhibit 25, emphasis added.] The Committee has learned, however, that the Wackenhut agents did obtain at least a credit report on Adams. [See discussion on pp. 125–129.]

[38] Mr. See has denied he ever provided Hamel with confidential Alyeska information. [Exhibit 27.] The Committee does not know whether Mr. Rotan ever provided Hamel with information about Alyeska.

[39] The Committee was not provided with the toll records for the "907 business" or the "fax numbers."

The "Sting" Begins in Anchorage

Black, Lund and Ricki Jacobson [40] traveled to Anchorage on March 19, 1990. Wellington initially suggested they be in Anchorage at that time because he was aware that Hamel planned to be in Anchorage for a meeting with Jim Hermiller.[41] When Hermiller subsequently canceled the meeting, Wellington believed Hamel could be located by the investigators at an environmental conference ("Frontier Thinking") scheduled for March 20–22 at the Captain Cook Hotel in Anchorage.

Jacobson was assigned to attend the conference. Black instructed her to use her maiden name, Ricki Eidelson, during the course of her assignment. He gave her a Florida Driver's License, plane tickets, luggage tags and business cards in that name.[42] Black did not tell her the name of the client she was working for or the nature of Wackenhut's assignment for the client. She was instructed not to have any public contact with either Black or Lund while in Anchorage. She communicated with them by phone or by meetings in their hotel rooms. [Appendix to hearing record, pp. 303–304.]

Jacobson testified that she was told to become generally familiar with environmental groups, attend the conference and introduce herself to conference attendees as a researcher for The Ecolit Group. She said the only other assignment she was given initially, was to attempt to see a list of conference attendees to determine whether the name "Charles Hamel" was on it. [Appendix to hearing record, pp. 303–304.]

On the last day of the conference, Black pointed out Hamel to Jacobson in the hotel lobby. Later on that evening she saw Hamel again talking to another man she subsequently learned was Rick Steiner. She alerted Black, then followed Hamel and Steiner to the hotel bar and sat a few seats away from them. Jacobson testified that she had no conversation with Hamel and after a short time, Hamel and Steiner left. Black and Lund followed them out of the bar.[43] [Appendix to hearing record, pp. 305–306.]

Jacobson left for Miami on the morning of March 24, 1990. Hamel was on the first leg of her flight. He recognized her, they struck up a conversation and Hamel asked her to sit with him. [Appendix to hearing record, pp. 306–307; Exhibit 33.]

During the course of their conversation, Jacobson told Hamel she was a researcher for Ecolit and gave him her business card. Hamel told her of his activities regarding Alyeska and Exxon and dis-

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[40] Jacobson was formerly a realtor and had no experience as an investigator. She was hired by Black in November 1989 as a "private investigator intern." [Appendix to hearing record, p. 302.]

[41] At the same time, Hermiller was preparing for his testimony at the Committee's March 29 hearings on pipeline corrosion and environmental issues relating to pipeline operations.

[42] The Committee does not know how Black obtained a Florida Driver's License for Jacobson or whether Florida authorities were aware that a Driver's License has been issued for the purpose of a private "sting" operation.

[43] Black discovered that Hamel was staying at the Voyager Hotel. He later asked Wellington to get account information and telephone records for Hamel's room. [Exhibit 31.] Wellington claims he did not obtain the information. However, Wellington apparently did some of the investigative work in Alaska. For example, it appears that he authorized an inquiry by an Alyeska employee regarding the resident at a Juneau, Alaska address. The result was a public records search for information about Richard Fineberg, a former employee of the State of Alaska Office of Management and Budget. [Exhibit 32.]

cussed various people including Rick Steiner,[44] Riki Ott and Congressman George Miller. [Exhibit 33.] Jacobson testified that she was "astonished and uncomfortable" at the amount of information Hamel told a complete stranger. [Executive session testimony, p. 58.]

Jacobson saw a memorandum in Hamel's possession which was addressed to "terminal personnel." She also saw several unopened envelopes and a cassette tape. Jacobson did not see who the envelopes were addressed to, but told Black that Hamel bragged about receiving Alyeska's "mail" from inside sources. Although she did not see a label on the cassette, she told Black she had the impression it was "an important recording, possibly of an Alyeska meeting." [Exhibit 33.]

Hamel told Jacobson he would call her at Ecolit when he was in Miami the following month. Jacobson reported her meeting with Hamel to Black in detail on her return to the Wackenhut office on March 26, 1990. [Exhibit 33.]

It is unclear what Black and Lund did during the time Jacobson was at the conference. Wellington informed the Paul, Hastings firm that he may have seen Black and Lund briefly in his office, but they were there principally "to get the lay of the land." [Appendix to hearing record, p. 652.] However, both Black's and Lund's time records for that period are incomplete.

It is known that while in Anchorage, Lund reviewed Alyeska's telephone system to determine "how easy it would be for somebody to actually intercept voice transmissions between people in our company and outside numbers." [Exhibit 3, p. 490.]

In addition, on March 22, Lund visited Trustees for Alaska at 725 Christianson in Anchorage. He took photographs of the building, noted the names of several other occupants of the building and obtained Hamel's "800" number from the Trustees for Alaska office.[45] [Appendix to hearing record, pp. 426–427.]

On March 24, Lund again visited 725 Christianson where he selected 17 items from the residents' trash bin located behind the building. The trash he took was from the offices of: Guardian Ad Litem Services, Inc.; Vincent Vitale; Bering Sea Fishermen's Association; Stepovich, Kennelly & Stepovich; and Trustees for Alaska.[46] Lund added the names and telephone numbers of those identified in the trash to "the index."[47] [Appendix to hearing record, p. 437.]

Lund also visited Alyeska's Anchorage headquarters on March 24. During part of his time there, Lund witnessed a demonstration commemorating the anniversary of the *Exxon Valdez* oil spill. Lund took two rolls of film identifying persons he believed to be

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[44] Jacobson was able to see some details of a paper in Hamel's possession, which she said was Steiner's resume. She copied down his social security number and his date of birth and gave it to Black. The Committee was not provided with any documents relating to Steiner.

[45] Lund did not state how he obtained Hamel's number from Trustees' office.

[46] The trash is not attached as an Exhibit; however, the persons or entities listed above may review the Committee's copies of their own trash on request.

[47] The index is presumably the master list of telephone numbers Lund created to check for communications between Hamel and Alyeska employees. However, it appears to have included persons not employed by Alyeska.

"key members" [48] of the demonstration and noted license plate numbers on cars in the vicinity. He later obtained from Wellington the identities and addresses of the cars' owners. [Exhibit 35.] He also obtained the name(s) of the organizers of the demonstration and apparently added them to "the index." [Exhibit 36.]

The "Sting" Moves to Valdez

Lund returned to Alaska with Crep on April 1, 1990. One purpose of the trip was to try to get citizens of Valdez, Alaska—in particular Alyeska employees—to discuss their feelings about Alyeska with the Wackenhut agents. [Exhibit 37.] Lund and Crep were instructed to focus on obtaining information about Alyeska's Corrosion Dig Program, communications between Alyeska and its employees and/or contractors, pipeline operations, the Valdez terminal, safety issues, restrictions placed on employees regarding the media, and how spills are handled internally. [Exhibit 37.]

Lund wired Crep's room at the Westmark Valdez Hotel with "a low light monogrome [sic] camera concealed in a hotel article allowing full view of all persons entering the room." He ran wires to his room which allowed him to monitor the "audio/video/telephone traffic" from Crep's room. In order to conceal his activities from the hotel staff, Lund set up the equipment in his room "to appear as home video equipment being recharged or for replaying at the end of a busy day." [Appendix to hearing record, p. 484.]

Crep placed a classified ad in the April 4 *Valdez Vanguard* announcing Ecolit and its interest in confidential interviews with citizens of Valdez to discuss "the oil spill and other issues pertinent to the protection of our environment." [Exhibit 38.] Lund and Crep also placed similar notices on bulletin boards in various public places and on selected cars in the Alyeska employees' parking lot.[49] However, there was no response to these solicitations. [Exhibit 39.] Apparently some Valdez citizens at least jokingly suggested that Lund and Crep might be Drug Enforcement Agency agents or spies for Exxon.[50] [Exhibit 39.]

Lund and Crep spent much of their time in Valdez from April 2–10, 1990 exploring the town and talking to various people for "background" information.[51] While at the Club Bar, they spoke to the bartender, Robert Swift, who is originally from Florida and quickly befriended the investigators. He informed them about the community and some of its people. They met with Swift several times before leaving Valdez and had dinner with him one evening at the Pipeline Club. At the same time, without informing him, they obtained a credit report on him as well as information regard-

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[48] Included as "key members" were a demonstrator who threw crude oil on a sign in front of the Alyeska building and a photographer wearing an "Earth First" hat. Lund noted that "[t]his group has been identified by the national media as a group who furthers it's [sic] cause publicly by vandalizing corporate assets and disrupting operations of corporations they deem to be not acting in the interest of ecology." [Exhibit 34.]

[49] Wellington testified that he does not believe this practice to have been deceptive. [Exhibit 3, pp. 460–463.]

[50] Hamel later told Jacobson that Ecolit used the wrong hotel. He said the Westmark is frequented by Exxon and Alyeska. No employee would go to that hotel to speak with Ecolit for fear of being seen by Exxon or Alyeska. [Exhibit 40.]

[51] They reported to Wellington that an employee of the Chamber of Commerce told them of a considerable drug and alcohol problem in the community and on the pipeline. However, that employee has since stated that she was "badly misquoted and maligned." [Exhibit 41.]

ing his vehicle registrations in Alaska and Florida, his Florida driver's license, police record and property ownership. [Appendix to hearing record, pp. 494-495; Exhibits 39, 42, 43.]

Another purpose of their trip to Valdez was to establish contact with Robert Scott and attempt to buy Alyeska documents and information from him. [Exhibit 22.] Lund and Crep watched Scott's home; obtained a credit report on him; [52] checked records of his driver's license, vehicle registration and property ownership; [53] twice collected garbage from the front of his home; attempted to listen in on a conversation between Scott and his wife while at dinner in a Valdez restaurant; and placed one of their notices on his car in the terminal parking lot in an unsuccessful attempt to lure him to a "confidential" interview in Crep's hotel room. They also unsuccessfully tried the direct approach, by attempting to engage him in conversation outside a meeting he attended at a Valdez restaurant. [Appendix to hearing record, pp. 487-497.]

Hamel Takes the Bait

One day after Lund and Crep placed the notice on Scott's car, Hamel made his first telephone call to Ecolit's Miami office. He called and left a message on the answering machine for "Ricki Eidelson." However, Black (alias "Jenkins") returned his call. Hamel told Black he was calling Ecolit because "his sources" at the Valdez terminal couldn't believe that Ecolit had gotten through Alyeska security to place flyers on employee cars. Hamel was impressed by this ingenuity and was also very inquisitive about Ecolit and its activities. He spoke with Black for 30 minutes and agreed to meet him in Washington to discuss their mutual interests. [Exhibit 45.]

Hamel called Ecolit again on April 25, 1990. He spoke to Jacobson about their plans to meet in Washington and told her that while there she should contact Jeff Petrich, whom he explained was involved with "various meetings in Washington dealing with the environment." [54] Jacobson and Black reported to Wellington that Hamel did not further explain who Petrich was. [Exhibit 40.] Wellington apparently explained Petrich's relationship to Congressman Miller because the next morning, Jacobson called Miller's office for a schedule of hearings. [Exhibits 46, 47.]

The "Sting" in Alexandria

Lund spent April 30 through May 3 in Alexandria, Virginia spying on Hamel and his wife. In addition to watching Hamel's house and taking photographs of Mrs. Hamel walking the dog, Lund took two bags of the Hamels' trash,[55] and obtained informa-

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[52] The credit report was actually obtained on March 27, 1990, prior to the Valdez trip. [Exhibit 44.]

[53] They reported that Scott purchased his home from Alyeska "under terms and conditions which may be useful during the future investigation." [Appendix to hearing record, p. 496.]

[54] Chairman Miller's subcommittee hearing on *Exxon Valdez* natural resource damages and Exxon settlement negotiations were held in Washington on April 24, 1990. Petrich was Counsel to the subcommittee and the key aide for the hearings.

[55] This was apparently the only time Lund took trash from Hamel's residence. Black never took any of Hamel's trash. On May 16, Lund hired Gerald Davis, a local private investigator, to continue "trashing" Hamel's home. Davis picked up trash on May 16, 23 and 30. Trashing ceased when Hamel told Black he had photographed the people who were taking his trash. [Exhibits 48, 49.]

tion regarding the Hamels' court, business and financial records, including the balance on one of Hamel's bank accounts.[56] [Exhibits 52, 53.]

As pre-arranged by Jacobson, Hamel met Black and Jacobson in Washington on May 9.[57] He first took them to his office at Management Information Technologies, Inc. ("MITI") [58] to look at computer equipment. Hamel then drove them to his home. During the ride to Alexandria, Black sat in the back seat of the car looking through Hamel's mail. At Hamel's home, when Hamel was out of the room, Black looked through Hamel's mail and other papers on Hamel's desk. [Appendix to hearing record, p. 310.]

Black took at least one piece of mail that day from either Hamel's car or his home. That piece was a newsletter published and distributed by ARCO Alaska, Inc. called *On Top of ANWR* and contained in an envelope addressed to Gloria Ewell [59] at the MITI office. The return address was Scott's post office box number. [Exhibit 56.[60] See also, appendix to hearing transcript, p. 311.[61]]

At dinner with Hamel and his wife, Black attempted to tape record the conversation using a tape recorder concealed on his body. His attempt was unsuccessful. [Appendix to hearing record, pp. 310-311.]

One week later, on May 16, 1990, Black returned to Washington with Lund. They met Hamel at his home in Virginia. While there, Black took three documents from Hamel's desk. [Exhibits 57, 58.[62]]

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[56] It is not clear precisely how Lund obtained Hamel's account balance. Lund reported to Wellington that he obtained the current balance on Hamel's account at the Crestar Bank at 515 King Street, Alexandria, Virginia (branch #77) using Hamel's social security number and date of birth. On inquiry by Committee staff, that branch indicated that according to Crestar policy, account information is given out only to persons with the account number and a description of the last account transaction. Such information was not contained in Hamel's trash; moreover, Lund obtained the bank balance prior to taking Hamel's trash.

Lund's time record for May 4, 1990 indicates that he also obtained information on that day about Hamel's "interest accounts." The record indicates Lund paid someone $85 for that information. [Exhibit 50.] We note also that Wackenhut apparently used the services of other private investigators who claimed access to such private banking information. [Exhibit 51.]

[57] Although Jacobson set up the meeting with Hamel and did attend the meeting on May 9, the record indicates that on April 30, Jacobson wrote Black: "After much thought and soul searching I can not continue with my role in case 427." [Exhibit 54.]

She wrote Black again on May 6: "After Wed.'s meeting w/ Hamel in D.C. and after I enable you to meet w/ him—I do not want any more contact w/ Charles Hamel. I will not meet w/ him *or speak w/ him again.* My role in case 427 will be through. *I want no more to do w/ this case.*" [Exhibit 55.]

Jacobson quit her job at Wackenhut at the end of June 1990.

[58] Contrary to statements made at the hearing, MITI is a *bona fide* business entity. Hamel has a part ownership interest in the business, which is run by Ken Ewell. Hamel's sources often sent information to him at the MITI office address.

[59] Gloria Ewell is the wife of Ken Ewell, chief executive officer of MITI.

[60] The copy produced to the Committee by Alyeska contains Black's handwritten notation that it was taken from Hamel's residence on May 9, 1990. [Exhibit 56, p. F2R400105.]

[61] Jacobson testified that she saw Black in possession of "two long envelopes, bearing metered postage which he indicated he had taken from Hamel" and which he stated "were stolen anyway." [Appendix to hearing record, p. 311.] Exhibit 56 contains stamped, not metered postage. We assume, therefore, that it was an additional item taken from Hamel on May 9, 1990. The Committee was not provided with copies of any white envelopes bearing metered postage.

[62] Lund's May 16 memo states that Black collected "blank examples" of Alyeska documents from Hamel's residence. However, none of the documents Black took and provided to Wellington are blank. One document is a copy of an Alyeska work request form regarding action taken on a safety complaint. [Exhibit 57.] The second document is a copy of an Alyeska administrative memorandum regarding a systems failure, oil spill response activities and several safety matters. [Exhibit 57.] The third document contains copies of two Alyeska messages. The first is about the issuance of an Alyeska security pass; the second is a posted memo from Alyeska's Anchorage Public Affairs Department. [Exhibit 57.]

Black and Lund also went with Hamel to MITI for a demonstration of Readware, a software program which scans documents and inputs data directly from the document into the computer database. They posed as interested buyers. However, Black and Lund talked Hamel and Ewell into providing free use of the software by promising that when "the software becomes the catalyst in a *win* in one of our cases, we will reimburse you for the costs." [63] [Appendix to hearing record, p. 499.]

While Lund was at MITI for the demonstration, Hamel and Black went to a coffee shop where Hamel showed Black Alyeska documents he said he had received from his sources at Alyeska. During their conversation, Hamel spoke of knowing Congressman Miller. According to Black, Hamel "reminded" him that Miller had stayed at Hamel's house in Alaska during the *Exxon Valdez* hearings. He also told Black that he provided Miller with information he received from sources in Alyeska.[64] [Exhibit 57.]

At dinner with Lund and Hamel, Black sat at another table and dictated into a recorder descriptions of several of the documents Hamel had shown him. [Exhibit 60.] During dinner conversation, they again discussed Congressman Miller.[65]

Black Seeks Legal Advice About Congressman Miller

On May 17, 1990, Black spoke to Wellington regarding his meeting with Hamel the previous day and Hamel's statements concerning Congressman Miller. Although no written record of the conversation was produced to the Committee, since Wellington instructed Black to seek outside legal advice about involving a U.S. Congressman in the investigation,[66] it appears that Wellington and Black had decided that involving Miller would be advantageous.

Therefore, in the late afternoon of May 17, 1990, Black contacted William Richey and Jonathan Goodman of the Miami law firm Richey, Munroe, Fine & Goodman[67] and asked for advice on the

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[63] MITI billed Ecolit $6,000 for the software, but agreed to defer payment until Ecolit's first win. [Exhibit 59.]

[64] Black's May 18, 1990 memo to Wellington states that Hamel told him he was "feeding" Miller "stolen" documents and information received from his sources in Alyeska, that Hamel and Miller would "set up" Hermiller at upcoming hearings and that until Alyeska paid Hamel the money they owed him, "he and George Miller would make their lives miserable." The memo also states that Hamel was evasive when asked if Miller or anyone on his staff had seen information contained on attorney-client documents. [Exhibit 57.]

[65] Lund's memo to Wellington dated May 16, 1990 states that Hamel told them he "supplies information to Miller based off of the stolen documents from Alyeska. This inside information is utilized to query witnesses before the subcommittee in a manner which lets it be known that there are adverse parties providing inside information." The memo also states that Hamel, apparently at Black's suggestion, "agreed to provide Black with . . . correspondence between Miller's office and the Attorney General of the United States, Thornberg [sic]." [Exhibit 58.]

[66] Alyeska had not yet informed its in-house law department of the covert investigation. Since some of the documents Hamel received from his sources apparently originated in Alyeska's law department, Hermiller and Wellington initially suspected that in house attorneys could be the source of leaks. Alyeska apparently determined as early as March 1990 that the legal department was not the source of any leak. [Exhibit 3, p. 192.] It is unclear why corporate counsel was not informed at that time. Given that Wackenhut's in-house counsel does not appear to have been consulted, May 17, 1990 was likely the first time legal advice was sought or obtained on any aspect of the investigation.

[67] Black knew Richey when Black was still a Metro Dade Police Officer and Richey was Chief Assistant State Attorney in Dade County. Black later worked with Richey at the State Attorney's office. Richey also hired Black as a private investigator after Richey left the State Attorney's office for private practice in 1981. Neither Richey, Goodman nor their firm had ever represented Wackenhut or Alyeska prior to Black's joining Wackenhut.

legal aspects of extending the covert operation to Congressman Miller. [Appendix to hearing record, pp. 453–480.] Black apparently told the attorneys that Congressman Miller had actually received stolen documents from Hamel and may even have encouraged Hamel and/or his sources to steal confidential documents from Alyeska's office.[68] [Appendix to hearing record, pp. 453–480.]

During the May 17 meeting, they discussed one goal of the operation as "maybe suing Miller," but stated that the "best goal" was "getting Miller + Hamill [sic] indicted for encouraging theft of property." [Appendix to hearing record, p. 467.] Notes of the meeting reveal that "Wayne wants Miller to admit that he is using stolen documents" and that Black believed the "investigation has reached a point where we need to prove allegations against the Congressman." [Appendix to hearing record, pp. 469, 475.]

Black asked for an opinion regarding the risks and benefits of "going after Miller" and asked Richey and Goodman to advise him on the "feasibility of pursuing [such an] investigation [which would be] closely monitored electronically." [Appendix to hearing record, pp. 466, 468.] Black also wrote a memo to Jacobson dated May 18, 1990 directing her to "[f]ind out everything about Miller and his present committee." [Exhibit 61.] Jacobson delivered the information regarding Miller to Richey's office.[69] [Exhibit 62.]

Despite the clear statement of Black's goals during his meeting with Richey and Goodman, Black's memorandum of a meeting he had with Lund, Jacobson and SID employee, Ana Contreras, on May 18, 1990 states that he "reminded all present that the focus of the investigation was the person(s) stealing documents from Alyeska and not necessarily Hamel or Congressman Miller." [Appendix to hearing record, p. 443.]

However, Contreras confirmed that she was advised that Hamel's relationship with Congressman Miller was a key element of the covert operation:

> [T]he object of the sting operation was to identify those persons with whom Mr. Hamel was communicating, including congressmen and their staffs, Mr. Hamel's lawyers, other Federal and State officials, and the sources of information about environmental wrongdoing and litigation that Mr. Hamel was involved in or connected with against Exxon and/or Alyeska.
>
> It was my understanding that Mr. Hamel was engaged in lawsuits against Exxon, and that he had caused a great

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[68] Although Black apparently told his attorneys that the documents in Hamel's home had been "stolen" by Hamel or his sources, Goodman's notes indicate that he believed there was some question whether the documents would legally be considered "stolen." "[P]ossible that it might *not* be a theft." [Appendix to hearing record, p. 477.] Goodman and Richey later wrote Wellington that under Florida law, and employee's photocopying and distributing Alyeska's proprietary documents to the press and others would probably be a crime. [Appendix to hearing record, p. 455.] He did not analyze Alaska law then, nor had he or Richey analyzed Alaska law by the time of the Committee's hearing.

[69] It is clear that Jacobson visited the local library and obtained publicly available information about Congressman Miller. [Hearing transcript, pp. 75, 80–104; executive session transcript, p. 110; Exhibit 62.] It is not known what other information about Miller may have been provided to Black and Richey by Wellington or obtained as a result of other research, *e.g.*, Crep's research on the oil industry in Alaska. No such information was produced to the Committee. George Wackenhut and Richey testified that no additional information on Miller was ever obtained. [Hearing transcript, pp. 12, 75.]

> deal of embarrassment to Exxon and Alyeska as a result of his information; I understood that Alyeska and Exxon were willing to, and did, pay a substantial amount of money (in excess of one million dollars) to fund this operation. Wayne Black repeatedly told me that for Exxon cost was no issue.
>
> I was told numerous times by Wayne Black that this case was being funded by Alyeska and Exxon in order to compromise Mr. Hamel in some way. . . .

[Appendix to hearing transcript, p. 326.]

Another SID employee, Mercedes Cruz, also informed the Committee that when she was hired in July 1990, she was told

> . . . the purpose of the case was to get information on Mr. Hamel. Our client, Alyeska, has been having trouble with Mr. Hamel because he was telling the media, Congress, environmental regulatory agencies, and attorneys about Exxon and Alyeska's wrongdoing and illegal actions. . . . I was told that Mr. Hamel was doing this because he had been an oil broker and felt he was cheated by Exxon and Alyeska.

[Appendix to hearing transcript, pp. 282–283.]

In an opinion letter issued on May 22, 1990, Richey and Goodman advised Wellington and Black that there were several significant and difficult issues underlying the plan to target Congressman Miller and that "neither Alyeska nor its agents should approach the Congressman as part of an undercover investigation until these issues have been adequately researched and analyzed and until you make an informed policy judgment that the potential benefits are worth the risks and associated costs." [Appendix to hearing record, pp. 453–454.]

The attorneys advised Wellington that it would be difficult to do a private sting on a Congressman and that it might be better to gather evidence to present to the FBI. They suggested that since Black and Wackenhut have "significant connections" at the FBI, the FBI might authorize Wackenhut to go undercover to investigate the Congressman as part of an FBI investigation. [Appendix to hearing record, p. 454.]

Among the legal issues raised in the opinion letter was whether the Congressman merely received documents which he knew to be stolen, or actively encouraged the theft. Counsel addressed the issue by analogy to a policeman who receives documents and a kilo of cocaine from someone who stole them during the burglary of a drug dealer's home. They explained that the policeman may legally keep the documents and the cocaine for use as evidence at the drug dealer's trial. They also stated that if a congressman similarly receives evidence of wrongdoing, his possession is also legal and he may use that evidence during a congressional investigation even if he knows the evidence was stolen. However, if he actively encouraged theft of the evidence, his receipt of the evidence would be illegal. [Appendix to hearing record, p. 456.]

The opinion letter expressed their belief that obtaining evidence that the Congressman encouraged the theft of documents would be very difficult.

> He will no doubt allege that his receipt of stolen and privileged documents is part of a legitimate, important investigation serving the public interest. He will almost certainly launch a full scale attack against you to save himself from harm for his misconduct. It is essential, to counteract his self-serving attack on the investigation, that all communications with him be tape recorded and preserved for evidence. His actual words must be available rather than the word of investigators. . . . It is our understanding that conversations with the Congressman might take place in Washington, D.C., Virginia and Maryland. Recording conversations with one party's consent is legal in the District of Columbia and Virginia. It is illegal in Maryland.

[Appendix to hearing record, p. 457.] [70]

At a meeting with Wellington in San Francisco on May 23, 1991, Black summarized the progress of the investigation and gave Wellington a copy of the legal opinion. In his summary, Black stated:

> We are concerned about Hamel's allegation that he and George Miller (D-California) are friends and that he feeds Miller information about Alyeska from stolen documents. . . . [W]e do not know if Congressman Miller or any member of his committee has requested Hamel or his sources to steal or otherwise obtain stolen documents from Alyeska. . . . [W]e feel no action need [sic] to be taken at this time. Surely, future contact with Hamel will result in additional, more clarifying information about Congressman Miller. If and when Hamel even hints that he (Hamel) is assisting or acting as an agent of Miller, we will cease our undercover approach.

[Appendix to hearing record, p. 447-448.] [71]

Video Surveillance Begins

On the advice of counsel, Black videotaped his June 21, 1990 meeting with Hamel at the Hyatt Regency Hotel in Arlington, Vir-

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[70] Richey and Goodman apparently had second thoughts about recommending that Alyeska surreptitiously intercept and record conversations. A memorandum written by one of the firm's associates suggests that it may be a violation of the lawyers' Code of Ethics for an attorney to recommend that a client conduct covert surveillance even if the surveillance is legally performed. [Exhibit 63.]

[71] In a memo dated June 5, 1990 addressed to "Distribution," Black described his recollection of the discussion at the May 23, 1990 meeting: "We discussed Hamel involving Miller in great detail. It was obvious to all present that George Miller had a fine reputation as a long standing member of Congress. It was felt that Hamel may be puffing when he mentioned that he spoke with George Miller. It is probable that Hamel is only speaking with one of Miller's aides as he had told me originally during our first conversation by telephone.

"It was reiterated that our original directive in this investigation . . . was to investigate the theft of proprietary information from Alyeska. Proprietary information that is protected by Alyeska's standard operating procedure and internal non-disclosure agreements. Additionally, all agreed that we would focus on Hamel's allegations that he had illicit sources inside Alyeska's legal department which provided him some of the attorney-client-privilege information now in our hands as exhibits." [Exhibit 64.]

ginia.[72] Black and Lund obtained adjoining suites and installed surveillance equipment, running wires between the rooms so that Lund could monitor the taping while Black talked with Hamel in his hotel room.

During the two-hour meeting, Hamel stated that if Alyeska and the oil companies want him to stop focusing his attention on exposing their environmental misdeeds, they would have to pay him the money he believes they owe him, provide their employees with a health benefits plan and clean up the damage they have done to the environment. He also specified certain areas in which a clean-up would have to occur. [Exhibit 65.]

Hamel also told Black about a law suit in which the court denied Alyeska's demand under the Freedom of Information Act ("FOIA") for disclosure of documents Hamel had given to the EPA.[73] The documents were copies of Alyeska documents which Hamel had received from Alyeska employees and which he claimed were evidence that Alyeska had violated environmental statutes and regulations. In holding that FOIA exemption 7A applied,[74] the court found that disclosing the documents to Alyeska would effectively reveal the identities of Hamel's sources and permit Alyeska to retaliate against them for leaking the documents to Hamel and through him to the EPA. In refusing to give the documents to Alyeska, the court also found that even the possibility of retaliation by Alyeska would have a "chilling effect on future witnesses who may be inclined to come forward with evidence of federal law violations." [Exhibit 66.][75]

Hamel also informed Black that as a result of Alyeska's attempts to get the documents from the EPA, he stopped providing government entities with copies of documents he received from his sources. "I stopped giving them new documents . . . . I'm not giving them anything . . . I keep giving the Federal Government information, I tell them what the document is and to go get their own . . . . I also give it to them in [a different] form. I take away identification all that kind of stuff, put it through fax machine." [Exhibit 65.]

Black raised the subject of the legal documents and appeared to be very interested in whether Congressman Miller was aware of Hamel's source for those documents:

> BLACK. Speaking of documents, those documents that I looked at were documents from inside the legal depart-

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[72] Goodman's notes of his May 17, 1990 meeting with Black indicate that Black believed he would be meeting Congressman Miller "several weeks" later. [Appendix to hearing record p. 469.] In addition, in her testimony at the hearing, Mercedes Cruz stated that she heard Black and Lund discuss that they had attempted to get a congressman to attend a meeting at a hotel in Virginia. [Executive session transcript, pp. 124-125.] Since the June 20, 1990 meeting at the Hyatt Regency was the only meeting Black set up at a Virginia hotel, it appears that Black may have believed Hamel would arrange for Congressman Miller to attend this videotaped meeting. However, Congressman Miller was not invited to, nor did he attend any meeting with Black.

[73] *Alyeska Pipeline Service Company v. Environmental Protection Agency, et al.*, No. 86-2176 (D.D.C. Sept. 9, 1987), *affirmed on appeal* (D.C. Cir. 1988). [Exhibit 66.]

[74] Exemption 7A requires a showing that disclosure will interfere with law enforcement proceedings.

[75] Alyeska fully recognized the implication of the court's holding in this case. After Pete James of Baker & Hostetler, McCutcheon, Black in Los Angeles was hired to craft a complaint against Hamel, his notes from conversations with Trotter and Wellington indicate they discussed the case. James's notes state: "Hamel contends that he is agent for whistle blowers . . . need to know if Hamel protected." [Exhibit 67.]

ment, those were incredible. Do you still have them? I'd like to spend some more time with them.

HAMEL. Well, here's what's happening. I'm meeting the intermediary for that source—two weeks—Seattle. . . .

* * * * *

BLACK. Does George know about that guy?

[Exhibit 65.[76]]

After Hamel told Black about a source who would provide him with information about dumping off the California coast, Black asked: "So when you meet with this guy and if it's good, your going to give it to Miller's people?" [Exhibit 65.] Black also inquired about the origin of Hamel's plan for Congressman Miller to hire a ship safety inspector as a Committee staffer for $1 a year and for them to board an Exxon vessel for a surprise inspection:

BLACK. Whose idea was this?
HAMEL. Mine. . . .
BLACK. Does [Miller] know?
HAMEL. No. No. I ran it by him, but it's mine. . . .

[Exhibit 65.]

Black also tape recorded a telephone conversation with Hamel on July 30, 1990 while Black was in his Miami office. [Exhibits 68, 69.[77]] Hamel told him about a Presidential Task Force which was part of legislation sponsored by Congressman Miller that provided for auditing and increased oversight of Alyeska's operations. He said it would have an 800 number which would put him and his 800 number "out of business." Hamel told Black that made him feel "like a billion dollars after all the years of fighting" which he never thought would amount to anything. [Exhibit 65.]

Alyeska Plans to Sue Hamel

In mid-July 1990, Alyeska General Counsel Fred Smith[78] retained Los Angeles attorney Peter James of Baker & Hostetler, McCutcheon, Black and Anchorage attorney Ed Boyko to prepare a civil suit against Hamel for damages and the return of "stolen" documents. Smith told James he wanted to "get even" with Hamel, whom he said "pushes Congress for investigations, apparently w/ success, gets data from Alyeska." [Exhibit 70.]

At an August 3, 1990 meeting at Wackenhut's Coral Gables headquarters, Black, Lund and Bernstein met with Wellington, Iverson, Lon Trotter (an attorney in Alyeska's Law Department) and outside lawyers Richey, Goodman and James. The operation was described as having two goals:

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[76] Although Black used only the name "George," from the context it appears that he intended to refer to Congressman George Miller.

[77] Although neither Exhibit states that the phone call was tape recorded, it is evident from the verbatim detail contained in Exhibit 69. In addition, George Wackenhut stated during his testimony at the November 5, 1991 hearing that Black had tape recorded the conversation. [Hearing transcript, p. 43.] Jacobson testified that Black told her he had recorded other calls to Hamel from Miami, but she did not know how many other calls were taped. [Executive session transcript, pp. 59-60, 95-96.]

[78] Smith first learned of the Hamel investigation on July 16, 1990 after Hermiller and Wellington were satisfied that he and his staff were not the source of the leaks.

1. Stopping flow of information to Hamel.
2. Preventing him from using the info [by filing a civil action].

It was also described as being driven by the "oil spill litigation." [Exhibit 71.] At the meeting Black recommended that they escalate the undercover activity by opening a Virginia office to continue videotaping conversations and suggested that they be ready to file the civil action should the increased activity result in Hamel discovering the undercover operation. [Exhibit 72.]

Black also recommended that Alyeska fire Scott and attempt to "make him a witness for us." He suggested that Richey and Goodman prepare a prosecution memo ("pross" memo) presenting their evidence to the FBI for further investigation and eventual criminal prosecution of Hamel and "others," including Scott.[79]

[Exhibit 72.] The Committee did not receive a copy of the pross memo and was informed at the hearing that it was never done. [Hearing transcript, p. 170.]

James prepared a draft complaint against Hamel, MITI and Ken Ewell stating civil causes of action for damages, including punitive damages, based upon their alleged wrongful possession of Alyeska's documents and their alleged inducement of Alyeska's employees to provide confidential documents to Hamel in breach of their employment contract with Alyeska. The complaint also stated causes of action for conspiracy and civil damages under the Racketeer Influenced and Corrupt Organizations ("RICO") provisions of The Organized Crime Control Act alleging that Hamel and Ewell have conspired with others to disseminate the documents "for pecuniary motives." It sought return of the documents in Hamel's possession and an injunction enjoining Hamel from providing the documents to anyone, requiring him to name every person to whom he provided or even described the documents and suppressing use by anyone of the allegedly privileged information contained in the documents. [Exhibit 73.]

In conjunction with the complaint, James also prepared an application for a temporary restraining order to prevent Hamel from disclosing information contained in the documents while the lawsuit is pending, and an order of seizure allowing Alyeska to take possession of the documents from Hamel immediately. [Exhibit 74.] It was anticipated that the lawsuit would be filed in federal court in Anchorage in October 1990 and that Judge Singleton would issue an order of seizure to be enforced in the Eastern District of Virginia by Judge Bryan. Toward that end, in September 1990, James' Washington, D.C. office contacted the U.S. Marshal in Virginia to arrange execution of the order of seizure. [Exhibit 75.] However, since no suit was ever filed, no order of seizure was ever entered or executed.

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[79] Black did not specify who "others" were. However, see pages 454 and 467 of the appendix to the hearing record regarding Richey's suggestion that information about Congressman Miller be provided to the FBI for investigation and Black's goal to have Hamel and Miller indicted.

Ecolit Office Opens in Virginia

In early August 1990, Wackenhut made plans to open an Ecolit office in Arlington, Virginia.[80] Goodman advised Black that although Wackenhut itself is licensed to do business in Virginia, each Florida investigator must be licensed in order to conduct an investigation in Virginia unless there is a "reciprocity" agreement between those states.[81] Goodman apparently left it to Black to determine whether such a reciprocity agreement existed between the states of Virginia and Florida. [Exhibit 76.]

Lund purchased a new IBM computer and electronic surveillance equipment for the new office. The equipment included a video camera concealed in a dummy ceiling sprinkler head. It was purchased in Florida and was transported to Virginia in a rented recreational vehicle ("RV") driven by Caputi and Cruz.[82] [Appendix to hearing record, p. 333.]

Before she left Miami, Black provided Cruz with a letter which she was instructed to show to any police officer who might stop the camper on the trip to Virginia. [Exhibit 77.] The letter described the confidential nature of the assignment and instructed Cruz not to release any information regarding the investigation to anyone, including law enforcement officials, whom she was instructed should be told to contact Black with any questions. The letter also stated that a Virginia investigator's license is not required for "those of us who are licensed in Florida to conduct a follow-up investigation in Virginia because of the reciprocity agreement between Florida and the Commonwealth of Virginia" and that "we will continue to maintain a close working relationship with Federal, State and local authorities in terms of cooperation without violating disclosure laws or confidentiality agreements."[83] [Exhibit 77.]

In early August, Black hired Sherree Rich, a former investigator with the Tallahassee, Florida Police Department and the Hillsboro County, Florida Sheriff's Office, to pose as a researcher in the Virginia Ecolit office. Black told Rich that Hamel was the target of their undercover operation because he was obtaining information about Exxon and Alyeska and turning it over to Congressman Miller and the U.S. EPA. [Appendix to hearing record, p. 296.]

Rich arrived in Virginia on August 13, 1990 and along with Lund and Vern Johnson, another Wackenhut investigator, prepared the office for covert videotape surveillance. The new office was located on the fifth floor of the Century Building at 2341 Jefferson Davis Highway in Arlington ("Crystal City"). Johnson installed computer equipment, including a scanner, which they planned to use to

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[80] In her statement to the Committee, Contreras said she "was told by Wayne Black that SID was in the process of establishing an undercover office in Washington, D.C. to target Congressman Miller and other unnamed congressmen to whom Hamel was providing information for use in their hearings about environmental wrongdoing by Exxon, Alyeska, and . . . other oil companies." [Appendix to hearing record, p. 325.]

[81] A reciprocity agreement would permit an out-of-state investigator to pursue an on-going Florida investigation in Virginia without a Virginia license.

[82] Cruz testified at the hearing that she understood the equipment was transported in the RV to avoid putting it through the airport security check. [Appendix to hearing record, p. 285.]

[83] There is apparently no reciprocity agreement between Florida and Virginia. Nor does it appear that either Wackenhut or Alyeska were at any time during this investigation maintaining any relationship with federal, state or local authorities.

obtain Hamel's documents. Otherwise, much like the Miami office, the Crystal City office contained some furniture, posters, newspapers and other items intended to create the impression of a legitimate business with interest in the environment. [Appendix to hearing record, pp. 294–296.]

Lund rented a second office several doors down the hall in the name International Overseas Trading Corporation ("IOT"), another bogus entity. He and Johnson ran wires for the video and audio surveillance equipment through the ceiling from IOT, over the intervening offices, to Ecolit using a remote-controlled toy dune buggy.[84] In the Ecolit office, they concealed a video camera inside a desk-top radio and hid the sprinkler-head microphones in the ceiling. Lund monitored the recording from the IOT office. [Appendix to hearing record, pp. 295–296, 333, 336.]

Surveillance of Hamel Continues

On August 18, 1990, Black arrived at Hamel's home wearing a body transmitter ("body bug"). Lund received the transmission and recorded Black's conversation with Hamel from a post in the RV Lund parked outside Hamel's home. After a short meeting, Hamel accompanied Black to the Ecolit office in Crystal City where Lund videotaped their conversation and then followed them to dinner at the Chart House in Alexandria, where he again tape recorded the conversation via transmissions from Black's body bug. [Exhibit 78.]

During the conversations, Hamel agreed to give documents to Black the next day, so they could be entered into Black's computer. Black offered Hamel $2,000 in cash, which he refused saying: "I got them for nothing and you will have them for nothing." [Exhibit 78.]

Black also asked Hamel whether George Miller knew about the documents:

> BLACK: Those guys don't want to know about legal documents; internal legal memos.
>
> HAMEL: No, no, they've been wanting to know. Petrich asked me for those a long time ago. I didn't give it to him. But here's what's been happening to Miller. Miller got originally. . .
>
> BLACK: Does Miller know about them? Or just Petrich?
>
> HAMEL: Just Petrich.
>
> BLACK: OK. Good. Because your other lawyer said he didn't ever want to see them. Because they're hotter than a firecracker. [85]
>
> HAMEL: I can tell you that the attorney general of Alaska knows about them; the attorneys for the plaintiffs know about them; the Justice Dept. knows about them. Everybody knows that I've got them and they all stand up in a group and say they can't look at them. But I can tell you

[84] Lund bragged about how he had accomplished the wiring without the knowledge of the Navy intelligence personnel who occupied the intervening offices. [Appendix to hearing record, p. 336.]

[85] At the hearing, the phrase, "hotter than a firecracker" was attributed to Hamel as evidence that he knew the documents were "stolen." [Hearing transcript, p. 179.] There is no evidence that the words were Hamel's or that the phrase means that Hamel believed the documents were stolen.

> that some of them have just kind of wanted to see what the heading was on each one of them and they go, woah! And I said that sooner or later I would find a way for them to have the benefit so I figured something out. Because there's no rush anyway; they're not there yet. And you may be the vehicle, I don't know.
>
> BLACK: You see, in this form, once we've put them in here, we're going to, well, you know the way Readware works, its going to be a form to extract the information. We're not going to have pictures of them after the first input. My computer guy will explain that all to you tomorrow.

[Exhibit 78.]

On the following day, August 19, 1990, Hamel met Black and Johnson at the Ecolit office and gave them the documents.[86] Black again offered Hamel $2,000, this time by check. Hamel again refused to accept the money. [Exhibit 79.] Black and Hamel went to Howard Johnson's for breakfast and Black again offered Hamel a check for $2,000. This time Hamel accepted the check stating that it would be used to cover the expenses incurred by his sources.[87] [Exhibit 81.]

Following these meetings with Hamel, Black told Wellington and Goodman about Hamel's numerous allegations of environmental violations by Alyeska and its owners. Goodman stated:

> Wayne and I both agreed that Alyeska needs to independently investigate the allegations provided by Hamel. First, it is the right thing to do. Second, it is strategically advisable because Wayne, Alyeska and the entire undercover operation would look terrible if the allegations were not pursued. In order to pursue these investigations, however, Pat Wellington and the other Alyeska officials supervising the undercover investigation must advise top-ranking company executives and the independent members of Alyeska about the investigation and the need to legitimately investigate Hamel's allegations. Alyeska might be able to turn the independent investigation into a public relations coup.

[Appendix to hearing record, p. 683.]

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[86] Hamel gave Black a box of documents. Black reported that "we have scanned into our Virginia computer approximately 500 stolen legal documents." [Exhibit 24.] However, in his testimony at the hearing on November 6, 1990, William C. Rusnack stated that "over 20 privileged documents" were found to be in Hamel's possession. [Hearing transcript, p. 207.] It is not clear whether the other approximately 480 documents were legal documents not subject to a claim of "privilege" or not legal documents at all.

[87] Hamel specified that he would use the money to reimburse two sources who were planning to follow trucks to Mexico in order to determine whether they were carrying hazardous waste and oil sludge from the oil industry for sale to Mexican farmers who allegedly use the waste to control dust on roadways. Hamel accepted another check for $2,000 from investigator Sherree Rich on August 24, 1990. [Exhibit 80.]

Black apparently informed Alyeska that Hamel had asked to be a paid "consultant" to Ecolit and had requested that the payments be made to him and characterized as payments for "software." [Appendix to hearing record, p. 715.] The tape-recorded conversations do not confirm that Hamel made any such requests. In fact, the transcript of Black's August 19, 1990 conversation with Hamel indicates that Hamel accepted money from Black reluctantly and only to pay expenses for his sources.

Apparently Wellington agreed. "During your last visit to Miami, we discussed just what to do should Hamel make such allegations. You mentioned that we had no choice but to follow through. I could not agree more. Bill Richey and Jonathan Goodman feel the same way." [Exhibit 82.]

In fact, Black encouraged Hamel to provide him with information about alleged violations of environmental laws.

> I cannot quit thinking about the leads you have regarding dumping and other alleged atrocities by Exxon, Arco, BP and the bunch. Please do whatever you can to give me the scoop so that we can not only put a stop to what's going on, but make somebody pay for it.

[Exhibit 83.]

Black met Hamel at Ecolit in Virginia again on August 23, 1990. Black asked Hamel for additional information about alleged violations by Alyeska and its owners and specifically urged him to disclose his source of information regarding pollution by Exxon.

> BLACK: Tell me about Alyeska. I understand the way they work that they're this management company or this service company that runs the pipeline for these other people—we talk about Exxon ships and things like that. Do we have anything that we can file on them? It seems like its the head of the triangle there. Is there anything, do we have any kind of nastiness going on with these guys that we can prove?
>
> * * * * *
>
> Yeah. I'll tell you what our priorities are. First priority is, if there is any pollution going on, we want to get there, like, if you can tell that tomorrow morning at 9 o'clock in San Francisco somebody is doing something bad, I want to get there, film it, and stop it. The second thing is before we hire a lawyer, file any kind of action, or do anything like that, we need to be able to go in there in good faith, and be able to prove it. I need somebody to say, yeah, I am Chuck Hamel and I was on this ship, and we dumped these barrels over before . . .
>
> HAMEL: Yeah, I got that one guy.
>
> BLACK: OK. That's the guy I want. . .
>
> * * * * *
>
> HAMEL: But how do you protect the guys, these 22 guys, from the future, the Coast Guard will go after them and take their license away?
>
> BLACK: The only way to protect them is to, for us to protect them . . . we can say that these are the guys that came forward to help us against personal . . .
>
> HAMEL: But they can't do that. If they come forward they're going to lose their jobs at Exxon.
>
> BLACK: Somebody has to come forward.
>
> HAMEL: I got the one guy.
>
> BLACK: The one guy. So we get an affidavit from him.

[Exhibit 84.]

During their conversation about these allegations, Hamel again told Black about his plan to have Congressman Miller hire John Ballantine, a ship safety expert from Seattle, as a Committee staffer for $1 a year. He told Black that Ballantine could help Miller "set up" Exxon by advising him of what to look for during an inspection on board an Exxon ship docking in Miller's district.

BLACK: Does Miller know this yet?

HAMEL: I've talked to his people that I have something coming in . . .

* * * * *

BLACK: So this committee expert is really going to be Ballantine, [your] guy?

HAMEL: I know.

BLACK: And Exxon——

HAMEL: He has no money for this. I mean he has I, I, paid, between you and me, I have the Chief Counsel for Alaska to Alyeska at my expense.

BLACK: The Chief Counsel for who?

HAMEL: Miller. His Chief Counsel. Miller's office, his committee has no money. Udall keeps things . . . no money.

BLACK: Oh, this is this guy Jeff . . .

HAMEL: Jeff Petrich.

BLACK: Petrich. You flew him up there?

HAMEL: I paid for everything. Well, you know why. What happened. That lead up to his big air pollution thing that's going on that they've been polluting their people, everyone, every Alyeska employee now has a mask . . .

BLACK: Yeah. Yeah.

HAMEL: —because they're polluting.

BLACK: But Exxon—But Miller's been a thorn in Exxon's side. And Exxon knows that Miller's getting the scoop from you.

HAMEL: Well, they know that all along. . . .

[Exhibit 84.]

Another videotaped meeting between Black and Hamel occurred on August 30, 1990. Hamel told Black that Petrich enjoys backpacking in Alaska—"that's why I took him to camp and all that stuff." He told Black that Riki Ott and another friend went fishing, camping and hiking with Petrich and that he and his wife stayed at Rick Steiner's house. When Hamel moved on to another topic, Black brought him back to Petrich asking, "What kind of guy is Petrich" and "Does Exxon know that you're close with him?" [See Exhibit 85.]

Hamel also repeated his plan to have Ballantine work as a Committee staffer for $1 per day. Black again asked:

BLACK: Does Miller know about this yet?

HAMEL: Yeah, Petrich knows that I got something going . . .

* * * * *

BLACK: Is, my, the big question. The thing that is gonna put it all together, is Petrich gonna be able to do it? Will he do it?

HAMEL: He'll do the California one. He won't be able to do anything about Florida.

BLACK: Right. But you think he'll be able to convince——

HAMEL: Absolutely . . .

[Exhibit 85.]

In discussing some of the documents he had obtained, Hamel told Black:

HAMEL: [W]hat I already put in the file system and asking the ReadWare, I found two references to those secret meetings, that secret that nobody knew about, that prior to the *Exxon Valdez,* the two meetings that the oil companies had about, they're in trouble, they can't handle the spill because of Exxon.

BLACK: You told me about that.

HAMEL: But that was dynamite. Now Miller has gone out and done something with that.

BLACK: Those are the kind of memos, those internal memos that you get out from under them, that we should put in there.

[Exhibit 85.]

Hamel also told Black that he had received the legal documents not from an Alyeska employee, but from a newspaper reporter in Tacoma, Washington with contacts in Anchorage. [Exhibit 85.]

Later on August 30, 1990, while waiting at National Airport for his flight to Miami, Black called Hamel's home. He and Lund attached a recording device to the public telephone so the call could be recorded. On Black's first attempt to reach Hamel, he was not at home. Black spoke with Mrs. Hamel and agreed to call back later. On his second attempt, Black reached Hamel and recorded their conversation.[88] [Exhibit 87.]

On September 18, 1990, Black called Hamel from Miami. During the conversation, Hamel provided Black with additional information regarding Exxon's alleged dumping of hazardous waste off the Florida Keys and the Dry Tortugas.

In a very detailed memorandum to Wellington about the allegations made during the September 18 call,[89] Black reported that Hamel wanted Ecolit to investigate the dumping and obtain an *ex parte* cease and desist order against Exxon. He said Hamel did not want to proceed until after the settlement of his law suit with

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[88] Wackenhut did not produce a transcript of these taped conversations. Alyeska produced a transcript after the Committee's hearings. [Exhibit 86.]

[89] It appears from the detail in the memorandum that this call may also have been tape recorded. The Committee was not provided with a transcript or a recording of this conversation.

Exxon, which he then anticipated would occur within a few weeks. [Exhibit 88.]

Black told Wellington that *Boston Globe* reporter William P. Coughlin had another source willing to work with Ecolit as an undercover investigator on board the ships involved in dumping and that *Wall Street Journal* reporter Allanna Sullivan planned to work with Hamel to expose and embarrass Exxon and BP for dumping waste off the Florida and California coasts. Black agreed to meet Hamel in the Crystal City office on September 26 in order to "go into more detail." [Exhibit 88.]

SEPTEMBER 20, 1990, MEETING IN MIAMI

Black presented his third Executive Summary of the investigation at a meeting in Miami with Wellington, Trotter, Lund, James, Richey and Goodman. Black reported that "Hamel continues to share information about his sources and his intent to publicly embarrass Alyeska, Exxon and the other companies until he is paid for what [he] perceives is his loss." [Exhibit 24.] He also told the group that Hamel stated on tape that he had paid for Petrich's vacation in Alaska and that he was providing an investigator to Miller for $1 a year. These assertions, and the previously-reported fact that Miller stayed at Hamel's rented house in Valdez, Alaska during the Committee's May 1989 *Exxon Valdez* hearings, were the subject of some discussion among those at the meeting. [Exhibits 89, 90.]

Black recommended that they prepare to file the civil suit against Hamel and review the videotapes before making any other operational decisions. "There is approximately fourteen hours of conversation with Hamel wherein he discusses everything from Congressman Miller's aide to ongoing pollution, to fish hatcheries." [Exhibit 24.] He also recommended that they continue videotape surveillance of Hamel in the meantime, "pushing him for additional sources of information. Since our last meeting, we have identified Don M. Rotan and William See as sources to Hamel." [Exhibit 24.]

Wellington announced that Hermiller planned to disclose the investigation to "the big three" [90] within the week and to all the Owners shortly thereafter. They also discussed the possibility of negotiating "privately" with Hamel and noted that such negotiations could be seen as "extortion." [Exhibit 89.]

OWNERS SHUT DOWN SURVEILLANCE ACTIVITIES

On September 25, 1990, Hermiller, Smith, Trotter and Wellington met in Denver with Fred Garibaldi, Darrell Warner and E. Anne Pace of Exxon, and William Rusnack and Paul Bilgore of ARCO. Hermiller informed them of the investigation, described the methods used by the investigators and the information learned to date.[91] He also told them that Alyeska had consulted Florida coun-

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[90] The "big three" Alyeska owners are BP, Exxon and ARCO, which together hold approximately a 90% interest in Alyeska.

[91] Garibaldi testified at the November 6, 1991 hearing that Hermiller may have informed him of taking "some specific steps to try to stop the leaks" as early as March 1990, but "the first

Continued

sel, and were advised that videotaping in the state of Virginia and making "fee payments" to Hamel were lawful. [Exhibit 91.]

The Owners were informed that Wackenhut had identified only Scott and See as Hamel's sources.[92] They were also told that a Tacoma reporter was Hamel's outside source for the legal documents, but that the reporter's Alyeska source had not been determined. [Exhibit 91.]

Hermiller also discussed the civil and criminal legal actions being considered against Hamel.[93] He told them that the main objective of any legal action against Hamel was to "neutralize" Hamel, "identify leaks" and "stop leaks—by letting our folks know he's hot." The Owners were also informed that the facts against Hamel were not strong, but Wackenhut agents were preparing to meet with Hamel again the next day and would "be more vigorous." [Appendix to hearing record, p. 611; Exhibit 92.]

During the meeting, Hermiller and Wellington showed excerpts from the videotapes of Hamel's conversations with Black. The excerpts included Hamel's assertions about his relationship with Congressman Miller and staff counsel Petrich as well as his allegations of Exxon's environmental violations.[94] [Exhibit 92.] [95] They "hyped up the tapes as containing information which would expose Hamel and Petrich as forming a conspiracy with gross motives." [Appendix to hearing record, p. 617.]

The Owners responded by ordering an immediate halt to the videotaping and any plans to use the information obtained during the investigation. They also discussed what to do with the information, *i.e.*, where to keep it and how to protect it from subpoena. [Appendix to hearing record, p. 612; Exhibit 92.] [96]

On October 2, 1990, the "big three" met in California. They agreed to hire an outside law firm to determine whether Alyeska's undercover investigation had violated any criminal law; whether there was any cause for civil suit against Alyeska; what their obligations were with respect to the information uncovered; what they should do with the files; what responsibility they have for Wacken-

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time I heard of the nature of the investigation that had taken place was September 25." [Hearing transcript, p. 228.] Warner and Rusnack testified that they did not know about the existence of the investigation until Hermiller called them in mid-September 1990 to set up the September 25 meeting and did not know any of the details until the September 25 meeting. [Hearing transcript, pp. 206, 221.]

[92] In fact, Scott was strongly suspected by Alyeska before Wackenhut was hired. See was apparently suspected only of providing Hamel with a mailing list of Alyeska employees.

[93] Notes taken by Bilgore and Pace show that the Owners were told the lawsuits contemplated a "RICO-type" action for conspiracy to tamper with a grand jury, extortion and transportation of stolen goods across state lines; a civil action for inducing breach of contract and conversion of documents; and an injunction ordering seizure of the documents. [Appendix to hearing record, p. 611; Exhibit 92.]

[94] Notes of the meeting taken by ARCO's counsel, Paul Bilgore, state: "Bad stuff on Miller [and] EPA—Ray Nye—Hamel intimate." [Appendix to hearing record, p. 610.]

[95] It does not appear that the excerpts shown contained much, if any, evidence about the sources of document leaks at Alyeska. [Appendix to hearing record, p. 616.]

[96] Bilgore summarized the conclusions reached at the meeting:

1. No rationale for legal action at this time.
2. Most serious "stolen" doc. is Chronology.
3. Check on subpoenability of tapes.
4. Shut down operation in an orderly manner.
5. Get rid of Scott—based on demerits.

[Appendix to hearing record, p. 612.]

hut's acts; and whether they needed to change their "control system." [97] [Exhibit 94.]

At the October 3, 1990 meeting of all Owners, Smith and Garibaldi disclosed the Wackenhut investigation and the actions taken to shut it down. The Owners were concerned that they had not been consulted in advance of starting such an investigation. They also complained that Garibaldi apparently had some knowledge of the investigation through "discussions" with Hermiller and yet had not informed the full committee. [Exhibit 95.]

ECOLIT SHUTS DOWN

On September 26, Wellington informed Black that the Owners had shut down the investigation. Black canceled his planned meeting with Hamel that day, and instead made plans to shut down the Crystal City office.[98]

Black was very troubled by the Owners' decision. Hamel had recently informed him that he told the U.S. EPA, his sources, the Wall Street Journal and others about Ecolit and its plan to act on Hamel's environmental pollution information. [Appendix to hearing record, p. 688; Exhibit 98.] Black believed that if Black, Lund and the other Ecolit employees simply disappeared, Hamel would become suspicious and attempt to find them.

> Now my dilemma. I have come to know and understand Hamel. He has convinced himself that he is the savior of Alyeska and possibly the planet in the fight against pollution and all that is wrong with big oil. He is in his own right a folk hero in Alaska. Even if he receives his $18 million dollar settlement from Exxon he will still have his sources and funnel information to the EPA, the media and anyone else who will listen for as long as he "Hamel" lives.
>
> Hamel tells us he has told the EPA General Council [sic], several lawyers, many of his sources and others about the undercover company and our intended actions with his pollution information. There is no reason to believe he will not make an investigative effort to find the people he spent so much time reporting so much to. . . .

[Appendix to hearing record, pp. 687–688.]

Black also was concerned about the Owners' decision not to accept copies of the videotapes, the transcripts or any details of Hamel's allegations. Although Black did not know for certain that any of Hamel's allegations of pollution were true, he believed Hamel to be a truthful person. He feared that if he and Wellington were the only ones with knowledge of Hamel's allegations, they

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[97] The Owners asked Paul, Hastings to consider the public relations and damage control aspects of the investigation in their report to the Owners Committee. Garibaldi stated that public relations would be better served "by never knowing" what was in any of the videotapes. [Exhibit 93.]

[98] Black told Wellington he would notify the landlord for the Crystal City office that Ecolit would move back to Florida the week of October 8, 1990. He said that Ecolit's month-to-month lease was paid through the end of October, but that IOT had a 6-month lease. [Exhibit 96.] It appears that Black simply walked away from the remaining obligations under the IOT lease, failing to pay the rent due or to notify the landlord of IOT's true identity and address. [Exhibit 97.]

would be the ones "holding the hot potato on this one." [99] [Appendix to hearing record, pp. 688-689.] [100] Hamel continued to call Black at Ecolit in Miami.[101] Black returned his calls, but did not see Hamel again. He told Hamel that Ecolit had lost its funding and that he was looking for a new job. Hamel offered to find funding for Ecolit or even to fund it himself. Hamel's last reported attempt to contact Black was on December 21, 1990 on or about the date the Miami Ecolit office was closed.[102]

Black had Rich return the computer software to MITI on December 26, 1990 after Black had several conversations with the Paul, Hastings attorneys regarding the circumstances of his receipt of that software.[103] Black apparently had no contact with Hamel or MITI at any time thereafter.

ALYESKA SEEKS LEGAL ADVICE

On October 1, 1990, Trotter called Richey and asked whether the evidence obtained during the investigation could be destroyed legally. Richey advised him that it would depend upon the answers to two questions: 1) "Did we discover anything that we are obligated by law to report to authorities?" and 2) "Have *we* paid $ to Chuck that in some way violates the Foreign Corrupt Practices Act or other criminal statutes?" [104] [Exhibit 102.]

Richey answered those questions in an opinion letter to Trotter and Wellington dated January 17, 1991. [Exhibit 103.[105]] With respect to the first question, Richey advised:

> Alyeska may be required to report the allegations concerning illegal dumping and discharges, though this requirement seems tenuous because Mr. Hamel's allegations are vague and are usually so nebulous that it is impossible to know whether Alyeska or its owners were 'in charge' of a vessel. To the extent that Mr. Hamel has provided credible information pinpointing a particular vessel or a specific incident, we recommend that Alyeska and its owners in-

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[99] Black apparently believed or hoped that Florida law and some form of work product or attorney-client privilege would protect him from having to disclose his knowledge of Hamel's allegations. [Appendix to hearing record, pp. 688-689.]

[100] When questioned at the Scott hearing about Black's October 5, 1990 memorandum, Wellington testified that he believed Black's reference to a "hot potato" was about losing control of the "valuable information that could be used later, you know, at a hearing." [Exhibit 3, p. 582.] He stated he did not believe the "hot potato" comment was a reference to Hamel's allegations of environmental wrongdoing. [Exhibit 3, p. 584.] This "interpretation" of Black's memorandum is belied by the document itself. [See, appendix to hearing record, p. 685.]

[101] The Crystal City office was closed by Sherree Rich on October 29, 1990. [Exhibit 99.]

[102] Black informed Paul, Hastings that Wackenhut planned to use the Ecolit office space in Miami to set up another phony International Overseas Trading office to be used for other undercover operations. [Exhibit 100.]

[103] On December 12 and again on December 20, 1990, Black told Paul, Hastings attorneys that he had already sent the software back to MITI on December 10, 1990. [Exhibits 59, 100.] However, Black and Wellington did not agree until December 18, 1990 that the software should be returned to MITI. [Exhibit 101.] Wackenhut's summary of time records indicates that Rich returned the software by Federal Express on December 26, 1990. [Exhibit 16, p. 93.]

[104] It is not clear why the second question was raised given the representation made to the Owners at the September 25 meeting that Richey had already advised that the "fee payments" to Hamel were legal.

[105] Those portions of the letter dealing solely with state law were omitted from the document provided to the Committee pursuant to an agreement between Alyeska and the Chairman.

> vestigate and determine whether reporting is advisable.[106]

With respect to the second question, Richey advised:

> The payments to Mr. Hamel would probably not generate any criminal exposure. Any effort to construe the payments as providing assistance to a criminal involved in the theft of documents would be inherently illogical and contrary to the facts. Furthermore, there is absolutely no evidence to suggest that the payment was made to persuade Mr. Hamel not to cooperate with law enforcement.

Richey concluded:

> Alyeska would probably not be exposed to criminal liability if it destroyed all or part of the Hamel undercover file. This cannot be guaranteed, however. . . . Alyeska would face devastating consequences in civil litigation if it destroyed all or part of the file. Regardless of whether there would be civil or criminal litigation, we recommend that all documents and evidence be preserved.

[Exhibit 103.]

Richey's opinion letter also stated that "[d]uring one of the taped interviews, Mr. Hamel said he had paid for Congressman Miller and his family to travel to Alaska. He did not go into much detail." [Exhibit 103.] Richey concluded that Alyeska had no obligation to report this allegation.[107]

THE PAUL, HASTINGS REVIEW

Within a few days after the October 3 Owners' meeting, the Owners retained the Los Angeles law firm of Paul, Hastings, Janofsky & Walker to review the undercover investigation.[108] On October 10, 1990, the Paul, Hastings team met in Los Angeles with Bilgore [109] and with Smith by phone from Anchorage to obtain background information.

To put the Wackenhut investigation into context, the Paul, Hastings attorneys met several times in October 1990 with members of the Owners Committee and their attorneys. They informed Paul, Hastings that Hamel has had an "obsession" with Alyeska since 1984 as a result of a business dispute over the water content of crude oil. [Exhibit 104.] They said that Hamel and his "Alyeska Mafia," a "loose coalition of activists and dissidents coalesced around Chuck Hamel," made continuous public claims of wrongdoing which resulted in Alyeska becoming "among the most heavily investigated companies in the United States." [Exhibits 104, 105.]

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[106] At least in some instances, it was possible to identify specific vessels. In her notes of the September 25 meeting in Denver, Exxon counsel Pace wrote regarding Hamel's allegations of dumping off the Florida Keys: "Exxon sold the 2 vessels that were doing this . . ." [Exhibit 92.]

[107] The letter does not indicate the date of or contain any excerpts from the taped interview during which Hamel is claimed to have made this allegation.

[108] The principal attorneys involved in this work were Leonard Janofsky, Joel McIntyre, Dorothy Kirkley and John Burns.

[109] Bilgore was Senior Counsel to ARCO Transportation Company and also served as Chairman of the Legal Affairs Subcommittee of the TAPS Owners Committee. He was designated by the Owners as the legal liaison with Paul, Hastings for its review of the undercover investigation.

Alyeska was, therefore, concerned about its "delicate public image that could be damaged seriously by further leaks or unfavorable publicity." [Exhibit 104.]

In addition, although they asserted that Hamel's claims were untrue, they admitted that "it has been apparent for over a year that his background information is accurate and could only have been supplied by one or more persons within Alyeska and/or the TAPS owner organizations." [Exhibit 105.] This fact, coupled with the January 1990 *Scottish Eye* broadcast, which showed Alyeska in a "very poor light" and disclosed a confidential legal document, caused a "siege mentality" to develop in the company. As a result, in order to stop the leaks of information to Hamel, Alyeska hired Wackenhut to find Hamel's sources.[110] [Exhibits 104, 105.]

Between November 6, 1990 and the issuance of their January 22, 1991 report, Paul, Hastings attorneys conducted interviews of 18 persons with knowledge of the investigation.[111] The lawyers also reviewed eight videotapes (approximately 11.5 hours long) and 11 audio tapes (approximately 15 hours long) containing conversations between Hamel and Black, as well as the documents, reports and other materials Wackenhut and Alyeska provided to the firm.

McIntyre and Kirkley interviewed Black in Miami on November 6, 1990. Black informed them that he had assumed from the beginning that the evidence he uncovered during the investigation would be used in a subsequent law suit. He said that he was therefore careful to conduct a "completely legal investigation." [Exhibit 22.]

Kirkley noted that Black did not inform them that he had been in Hamel's home on May 9, 1990 and that he stated that May 17, 1990 was the first time Hamel had mentioned Congressman Miller. He also initially told them that the reason he sought legal advice from Richey on May 17 was "because Hamel showed Black documents stolen from the Alyeska legal department." Later in the interview, Black told them he sought legal advice "because Congressman Miller had been so prominently mentioned by Hamel in the May 16 meeting." [Exhibit 22.] Black informed the Paul, Hastings attorneys about the videotaped meetings with Hamel, but did not inform them about his audiotaped telephone conversations with Hamel.[112] He also told them he believed that obtaining tele-

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[110] Notes taken by a Paul, Hastings attorney at an October 11, 1990 meeting with Rusnack, Garibaldi, Warner and Bilgore state that after confirming that Scott was supplying information to Hamel, Alyeska recommended that "Scott be terminated because of this activity—passing on company information." [Exhibit 106.] Notes further indicate that Alyeska recommended terminating Scott specifically on the basis of the leaks despite the fact that he was already on suspension for "fighting on the job." [Exhibit 107.] At his October 10, 1990 meeting with Bilgore and Smith, Janofsky "strongly cautioned against discharging" Scott. [Exhibit 104.] Nevertheless, on October 19, 1990, Alyeska terminated Scott effective October 24, 1990.

[111] Paul, Hastings interviewed Black, Lund, Bernstein, Caputi, Rich, Richey, Goodman, James, Wellington, Trotter, Smith, Iverson, Hermiller, Rusnack, Warner, Garibaldi, Bilgore and Steve Dietrich, who was Alyeska's Vice President for Administration during the initial stage of the investigation. Dietrich returned to his job at Exxon in April 1990.

Rich and Caputi informed the Committee that prior to interviews by the Paul, Hastings attorneys, Black told them to answer only the questions asked and not to volunteer anything. [Appendix to hearing transcript, pp. 299, 338-339.]

[112] In a follow-up telephone conversation with a Paul, Hastings attorney on December 20, 1990, Black was asked about audiotaped telephone conversations with Hamel. He informed the attorney that the only recorded telephone conversation was one he made to Hamel's home from National Airport in Virginia. Despite his clear knowledge that he had spoken to Hamel and

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phone toll records was legal because "he had a legal opinion to this effect from a prior investigation." [113] [Exhibit 22.]

The firm also prepared a legal memorandum dated December 7, 1990 titled: "Legal Issues Arising from Pollution-Related Allegations of Mr. Charles Hamel." [114] The purpose of this memo was to determine whether knowledge of Hamel's allegations created any obligation to report them.[115] The memo sets forth each of Hamel's pollution charges, analyzes the reporting requirements of the relevant environmental statutes and concludes:

> If Alyeska knows that the allegations of Mr. Hamel are factually baseless, or if they concern only past events which were previously investigated or reported, they do not create any new legal obligations for Alyeska. On the other hand, if the Hamel investigation brought to the attention of Alyeska violations of environmental laws, regulations or permits previously unknown to company officials, then Alyeska may have had a legal obligation to report the incident or to remedy the violation. It must be emphasized that several of the relevant environmental laws, regulations and permits include not only essential pollution-related provisions, but also additional self-reporting requirements.
>
> * * * * *
>
> In addition, if Alyeska is considered to be an agent of the owners, it may have had an obligation to report to the owners information it acquired in its investigation of Mr. Hamel. . . .

[Exhibit 109.[116]]

An addendum to the December 7, 1990 memo concludes that Alyeska would be deemed by a court to be an "agent" of its owner companies. [Exhibit 110.] The addendum also concludes:

> Although the environmental laws outlined in the prior memorandum do not explicitly require a detailed introspection regarding any and all allegations of illegality made by outsiders, some amount of internal investigation may be advisable, and necessary.
>
> * * * * *
>
> [B]oth the principles of agency law, and [case law] suggest that a principal may not avoid liability for failure to

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recorded their conversation, he stated that he did not provide Paul, Hastings with a copy of the audiotape because Hamel was not home and the tape contained nothing but small talk with Mrs. Hamel. [Exhibit 100.] On December 21, 1990, Kirkley called Black and asked again whether there had been any taped telephone calls with Hamel. Black then admitted that he had taped a telephone conversation with Hamel from a phone at National Airport. [Exhibit 108.]

[113] No such legal opinion has been produced to the Committee.

[114] Although the memorandum is addressed to McIntyre and Kirkley, we have assumed it was actually issued to the Owners Committee because the memo was produced to the Committee by Alyeska.

[115] Richey addressed a similar question in his work for Alyeska regarding the advisability of destroying the file on the covert investigation. [Exhibit 103.]

[116] The sections of the memo dealing solely with state law were omitted from the document Alyeska provided to the Committee pursuant to an agreement between Alyeska and the Chairman.

report a violation by consciously avoiding specific knowledge of a violation, and that circumstances suggesting the occurrence of violations of law may give rise to an obligation to make reasonable inquiries. Consequently, Alyeska may have a duty to conduct some investigation of both the allegations that pertain specifically to Alyeska, and those that relate to the owner companies.

[Exhibit 110.]

On January 22, 1991, Paul, Hastings issued its 95-page "Report to the Owners Committee of Alyeska Pipeline Service Company" (the "Report"). [Appendix to hearing record, p. 500.[117]] The Report set forth the facts as disclosed to the Paul, Hastings attorneys by Alyeska, its Owners and their Wackenhut agents. The Report also provided a legal analysis of the federal and state, criminal and civil laws applicable to several of the investigative techniques utilized by the Wackenhut agents, *e.g.,* obtaining the MITI software under false pretenses; surveilling Hamel and his wife [118]; "trashing" businesses and residences; obtaining telephone toll records from a Virginia telephone company contractor; "retrieving" four Alyeska documents from Hamel's home; and obstructing a congressional investigation.

The Report concluded that Black obtained the MITI software by fraud and had therefore potentially violated federal law. Because the discussions of state law were omitted from the Report by Alyeska, the Committee does not know what conclusions were reached regarding state criminal law and does not know whether the Report concluded that any state's civil laws have been violated by the investigators' techniques.[119]

At a meeting in Miami on March 13, 1991, Wellington instructed Black to arrange to have the entire investigative file transferred to Paul, Hastings in California. [Exhibit 114.] Black was very concerned about transferring the evidence and advised against it. [Exhibit 115.] Nevertheless, Black and Wackenhut employee Gil Mugarra personally delivered several boxes of files to Paul, Hastings on April 16, 1991.[120]

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[117] The portions of the report dealing solely with discussions of state law were omitted from the document provided to the Committee pursuant to an agreement between Alyeska and the Chairman. However, after Alyeska and its Owners submitted post-hearing legal defenses of Wackenhut's investigative techniques, the Committee requested that the Owners' Committee provide it with a complete copy of the Report so that Paul, Hastings' January 1991 conclusions regarding the legality of those techniques could be compared to the post-hearing opinions of counsel. Alyeska and its Owners have refused to produce the complete Report. [Exhibits 111-113.]

[118] The only physical surveillance reviewed in the Report consisted of audio and videotaped meetings with Hamel in Virginia, an audiotaped telephone conversation with Mrs. Hamel in Virginia, and visual surveillance of the Hamels in Virginia.

[119] It is important to note that the Report did not analyze the law applicable to other investigative techniques used by the Wackenhut investigators, including: recording telephone conversations with Hamel in Virginia and Florida; "retrieving" documents from Hamel's home which did not belong to Alyeska; obtaining telephone toll records from a "source" other than one working for the Virginia telephone company; and obtaining credit, banking and other such personal records without authorization from the individual involved. It appears that facts regarding the utilization of such techniques were withheld from the Paul, Hastings attorneys during their investigation. In some cases, the attorneys were provided with false information.

[120] Although there is no evidence that anyone disagreed with the conclusions reached by the Paul, Hastings attorneys at the time their report was issued, at the hearing Richey attacked the report as "highly inaccurate" and legally "deficient." Upon inquiry by the Chairman, Leonard Janofsky stood by the analysis and the conclusions stated in his firm's report to the Owners. [Exhibit 116.]

THE "STING" IS DISCOVERED

On May 28, 1991, Raphael Castillo, an investigator in Wackenhut's SID, resigned his position because of his "strong disagreement with the practices of Wayne Black." [Appendix to hearing record, pp. 318–319.] Castillo made a formal complaint about Black to the Director of Personnel at Wackenhut and, on June 12, 1991, met with Wackenhut Vice President of Domestic Operations, Alan Bernstein, and Wackenhut in-house counsel, Tim Howard. As a result of their discussion, Bernstein hired Castillo as a consultant to Wackenhut's management and authorized him to conduct an independent investigation into charges of sexual harassment made against Black by certain female Wackenhut employees and to document alleged licensing violations by Black. [Appendix to hearing record, p. 319.]

During the course of his investigation, Castillo conducted tape-recorded interviews with the consent of several Wackenhut employees who had worked on the Hamel investigation. In their discussions of Black, they also described the extent of the Hamel investigation and their concern about the propriety and legality of the surveillance techniques employed. [Appendix to hearing record, p. 319.]

Castillo played one of the taped interviews for Bernstein and Howard to inform them of his and the employees' concerns. When Bernstein and Howard did not appear to be concerned, Castillo completed his assignment and ended his relationship with Wackenhut in the belief that Wackenhut management supported Black's activities. [Appendix to hearing record, p. 321.]

After seeking legal advice, Castillo contacted Hamel to inform him of the "sting." He also offered his assistance should Hamel wish to bring the matter to the attention of federal and state authorities. [Appendix to hearing record, p. 321.]

THE COMMITTEE INVESTIGATION

Hamel contacted Committee staff at the end of July 1991 to inform them of Alyeska's covert operation.[121] He arranged for Castillo and Contreras to travel to Washington, D.C. on August 2, 1990 to speak with Committee investigators about the Wackenhut surveillance.[122]

On the basis of the information provided by these witnesses, the Committee took steps to obtain certain documents and to insure the preservation of all Wackenhut and Alyeska files regarding the surveillance activities. By letters dated August 7, 1991, Chairman Miller requested that Alyeska, Wackenhut, Exxon and certain of their employees voluntarily produce to the Committee, documents regarding the Hamel surveillance activities. The letters also put

[121] Hamel also contacted the Virginia Department of Commerce, which regulates private investigators working within the state, and the Commonwealth's Attorney for the City of Alexandria. Both conducted investigations of Hamel's charges. The Department of Commerce investigation resulted in a determination that Wackenhut conducted the covert operation in violation of a Virginia law requiring that private investigators be licensed in Virginia. Wackenhut was required to pay a $10,000 fine. [Exhibit 117.] The Commonwealth's Attorney's investigation is still pending.

[122] Hamel was represented by his counsel, Billie Pirner Garde. Castillo and Contreras were represented separately, by counsel in Florida who did not attend the interviews in Washington.

Alyeska, Wackenhut and Exxon on notice that destruction or alteration of any documents relevant to the Committee's investigation may be a criminal offense. [Exhibit 118.] [123]

Hermiller responded on August 12, 1991, pledging full cooperation with the investigation and stating that Alyeska intended its investigation of Hamel to "achieve a single objective—to protect our company's records and files." [Exhibit 120.] [124] Hermiller denied that Exxon "or any TAPS owner company authorized any such investigation" or that the investigation sought "to obtain information about any members of the Committee . . . or to interfere in any way with Mr. Hamel's communications with the Committee." [Exhibit 120.] Warner responded on August 13, 1991 that "[n]either Exxon Corporation nor any of its subsidiaries, including Exxon Pipeline Company, ever conducted or authorized any investigation of any sort or any undercover surveillance of Charles Hamel." [Exhibit 122.]

By the end of August 1991, four more former Wackenhut employees had come forward to provide the Committee with information regarding the Hamel surveillance operation. At the request of Committee staff, Adriana Caputi, Sherree Rich and Mercedes Cruz travelled to Washington, D.C. for informal interviews on August 28, 1991; Ricki Jacobson was interviewed in Washington, D.C. on September 4, 1991, also at the request of Committee staff.[125]

During that same period, Andrew J. Anthony, an outside lawyer for Wackenhut contacted Castillo, Contreras and Caputi demanding "pursuant to Florida law" that they "cease and desist" their disclosure of information about the Hamel case. [Exhibit 123.] Committee staff expressed concern in a letter to Anthony that his letter could be "interpreted as a threat or an attempt to harass or intimidate Wackenhut employees who provide the Committee with facts relevant to this investigation." [Exhibit 124.] Anthony responded by acknowledging the Committee's right to obtain the information, and stating that Wackenhut "extends its fullest lawful [sic] cooperation . . ." [126] [Exhibit 126.] [127]

On September 6, 1991, Alyeska delivered five boxes of documents to the Committee.[128] The accompanying letter explained:

> The vast majority of the materials were collected from The Wackenhut Corporation and Alyeska files after the

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[123] The request to Alyeska was supplemented by letter of August 28, 1991 to include documents relating to the Owners' decision to terminate the Hamel surveillance. [Exhibit 119.]

[124] Wackenhut's General Counsel James P. Rowan responded to the request for documents by stating that Wackenhut had turned all relevant documents in its possession over to its client, Alyeska, and that Alyeska would, in turn, provide the documents to the Committee. [Exhibit 121.]

[125] Although at the hearing there was some effort to discredit these former Wackenhut employees because some of the expenses they incurred in cooperating with the Committee were paid by Hamel, the Committee has found no reason to question their credibility. There is no evidence that any payments were made other than for travel expenses.

[126] Florida law prohibits the unauthorized disclosure of client confidences by a private investigator. By letter of October 1, 1991, Alyeska gave Wackenhut written authorization to disclose information regarding the Hamel investigation to the Committee. [Exhibit 125.]

[127] Although no further attempt was made to contact former employees through counsel, the Committee was informed by several former Wackenhut employees throughout the investigation that they and their families had been harassed and intimidated by persons they believed to be associated with Wackenhut and Wayne Black.

[128] Alyeska delivered one set of the documents to the majority staff; duplicate copies of the documents were delivered to the minority staff the next day.

> Owner Companies and Alyeska decided in September 1990 to terminate the investigation. This collection process was supervised and conducted by outside counsel retained specifically to deal with the Wackenhut investigation. The materials have been retained by such outside counsel until recently when we began to make copies for submission to the Committee.
>
> Our effort has been to search for and provide you with everything that is currently in the possession or control of Alyeska relating to the Wackenhut investigation, including all investigative reports and other materials developed during the investigation. If other non-privileged responsive documents or materials are subsequently identified, we will notify the Committee's staff and provide it with copies at the earliest time. The only materials relating to the investigation that are not being made available are communications between counsel and their clients which fall within the attorney-client privilege.

[Exhibit 127.[129]]

Although shortly after September 6, the Committee received some additional documents from Alyeska and Wackenhut which they stated had been belatedly discovered or inadvertently omitted from the September 6 production, certain key documents were not among the documents produced. For example, Wackenhut's monthly detailed invoices to Alyeska and Black's time records and personal notes were not produced to the Committee. [Exhibits 128–133.] Therefore, on September 26, 1991, pursuant to the Rules of the House of Representatives, the Committee authorized the Chairman to issue subpoenas compelling the production of documents. [Exhibit 134.]

In addition, because of an *Anchorage Times* article on September 13, 1991 which suggested that the reporter had access to documents not contained in the files produced to the Committee by Alyeska and Wackenhut, the Committee became increasingly concerned that its request for voluntary production of records was insufficient to ensure complete production.[130] [Exhibits 135–138.]

Alyeska and Wackenhut produced some additional documents in response to the subpoenas. However, several categories of documents were "missing" and, therefore, were not produced. No explanation was given for their disappearance. [Exhibits 139–155; *but see,* Exhibit 12.]

Alyeska had also initially declined to provide the Committee with copies of documents which it claimed were "privileged," *i.e.,* attorney-client communications or the work product of its attor-

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[129] Exhibit 123 includes an inventory of the files produced by Alyeska on September 6, 1991.

[130] A reporter for the *Anchorage Times* was given free and exclusive access to all the Hamel surveillance files in the possession of the Committee's minority staff. This access was not authorized by the majority and was, in fact, in breach of a specific agreement between the majority and minority staff counsel not to release the documents at that time. The reporter's September 13, 1991 article makes several statements which are not confirmed by (and, in fact, are contradicted by) documents produced by Alyeska and Wackenhut to the majority staff. Therefore, there was initially some concern whether both sets of documents were identical. Alyeska has assured the Committee that identical documents were produced to the majority and minority staffs and that reporter's statements were in error.

neys. However, after discussions with Committee staff, and the September 26 subpoena, Alyeska agreed to provide the Committee with copies of all attorney-client communications and attorney work product documents which related directly to the covert operation. The Committee agreed that it would not require production of "privileged" documents relating to the *Exxon Valdez* litigation because that litigation is outside the scope of this investigation. In addition, the Committee agreed that it would accept edited versions of certain letters containing the opinions of counsel. Therefore, those parts of the letters discussing the legality of Wackenhut's investigative techniques under state law were omitted.[131]

THE COMMITTEE HEARINGS

The Committee held hearings on November 4-6, 1991 to determine from the testimony of witnesses what the purpose and the goals of the undercover operation were; what had, in fact, taken place during the undercover operation; and why it was abruptly terminated. Subpoenas for testimony were issued to 6 witnesses: Wayne B. Black, Rick Lund, Ricki Jacobson, Sherree Rich, Mercedes Cruz and William Richey. In addition, 7 other witnesses appeared voluntarily: George Wackenhut, J. Patrick Wellington, James B. Hermiller, William Rusnack, Darrell Warner, Fred Garibaldi and Charles Hamel. All witnesses submitted testimony under oath several days before the hearing, Black's attorney informed the Committee that at the hearing his client would invoke Committee Rule 12(f)(2), which provides:

> No witness served with a subpoena by the Committee shall be required against his or her will to be photographed at any hearing or to give evidence or testimony while the broadcasting of that hearing, by radio or television, is being conducted. At the request of any such witness who does not wish to be subjected to radio, television, or still photography coverage, all lenses shall be covered and all microphones used for coverage turned off.

[Exhibit 156.]

Black was the first witness on Monday morning, November 4. As anticipated, immediately after the oath was administered, Black's attorney invoked the "no photograph" rule and the Chairman ordered all cameras turned off. However, in addition to the "no camera" rule, Black's attorney also invoked House Rule XI, clause 2(k)(5) which provides:

> Whenever it is asserted that the evidence or testimony at an investigatory hearing may tend to defame, degrade, or incriminate any person,
>
> (A) such testimony or evidence shall be presented in executive session . . . if by a majority of those present, there being in attendance the requisite number required under

[131] The Committee agreed to accept the edited legal opinions only as a compromise designed to avoid a protracted dispute over production of the "privileged" documents. The agreement provided that the Committee would accept the documents at issue "as if in executive session." Therefore, the documents were to be held in confidence unless and until the Committee voted pursuant to the Rules of the House to permit their disclosure.

> the rules of the committee to be present for the purpose of taking testimony, the committee determines that such evidence or testimony may tend to defame, degrade, or incriminate any person; and
>
> (B) the committee shall proceed to receive such testimony in open session only if a majority of the members of the committee, a majority being present, determine that such evidence or testimony will not tend to defame, degrade, or incriminate any person.

Black asserted that all testimony at the hearing "may tend to defame, degrade or incriminate" him and, therefore, requested that the entire proceeding be held in executive session.[132] However, the Committee determined that only the testimony of Jacobson, Rich, Cruz, Lund and Black himself would be likely to incriminate Black. Therefore, those witnesses testified in executive session for the remainder of November 4, 1991.[133]

In fact, Black and Lund did not testify, but instead asserted their Fifth Amendment rights not to testify. Although a witness's assertion of constitutional rights does not "defame, degrade or incriminate" him and, therefore, does not entitle him to assert those rights out of public view, in order to prevent further delay, the Chairman allowed Black and Lund to assert their Fifth Amendment rights in executive session.[134] The Committee was thus unable to question Black and Lund regarding their activities during the covert operation.

George Wackenhut testified in public at the hearing on Tuesday, November 5, 1991.[135] He was followed by a panel consisting of Richey, Wellington and Hermiller. On November 6, 1991, Rusnack, Warner and Garibaldi testified as a panel, followed by Hamel, the final witness.[136]

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[132] Since a hearing held in executive session is necessarily held without cameras of any kind, Black's invocation of House Rule XI rendered superfluous his invocation of Committee Rule 12(f)(2). Black had notified the Committee's majority staff only that Committee rule 12(f)(2) would be invoked, and had thus misleadingly implied that he would not request that the hearing be held in executive session. We note that while the majority was not notified in advance of Black's intention to request an executive session, the minority was fully aware of Black's intentions in advance of the hearing. In fact, on November 1, 1991, the minority sought advice from the House Parliamentarian regarding the correct interpretation of House Rule XI, clause 2(k)(5). [Exhibit 157.] A record of the Committee vote to close the hearing to the public is contained in the hearing record on pp. 6-8.

[133] Neither Jacobson, Rich nor Cruz requested to testify in executive session. Their testimony was heard in executive session solely because of the demand by Black. Pursuant to House Rule XI, clause 2(k)(7), the Committee later voted to release the executive session testimony to the public.

[134] Despite the executive session and the Committee's admonition not to disclose the content or the nature of the proceedings, the Committee understands that Lund informed the press he had refused to testify pursuant to his Fifth Amendment rights.

[135] Mr. Wackenhut was not called as a witness by the Committee. His attorney requested that a representative of The Wackenhut Corporation be permitted to make a statement for the record at the hearing. The Committee, therefore, invited Mr. Wackenhut to testify to make such a statement and answer questions from the members. [Exhibit 158.]

Prior to the hearing, George Wackenhut met personally with members of the Committee including the Chairman, to whom he stated: "All I have ever wanted, from the very beginning of this ordeal, was to be given a chance to publicly explain why we were retained by Alyeska, how the investigation was conducted, and, if asked, to present our findings to your Committee. I thank you for making that possible." [Exhibit 159.]

[136] Hamel made a statement, but was not questioned at the hearing.

AFTERMATH

Wackenhut

On November 14, 1991, after additional complaints about Black were made to Wackenhut by a current and a former employee, Black resigned as Vice President of Wackenhut's Investigations Division. [Exhibit 160.] Although called a resignation, it is clear that Black was given little choice in the outcome. [Exhibit 161.] Lund, however, retained his position as a full-time consultant to Wackenhut.

Upon Black's resignation, Wackenhut announced its curtailment of certain "special" investigative activities and effectively eliminated the SID:

> UNTIL FURTHER NOTICE, EMPLOYEES IN THE INVESTIGATIONS DIVISION SHALL ENGAGE IN THE FOLLOWING ACTIVITIES ONLY WITH MY EXPRESS CONSENT, WHICH CONSENT WILL BE GIVEN ONLY WHEN CORPORATE LEGAL COUNSEL HAS PASSED IN ADVANCE OF SUCH ACTIVITY:
>
> a. Search and inventory of any individual's or entities' garbage or waste products.
>
> b. Obtain or review financial or credit data on any individuals or entities without their written release.
>
> c. Monitor any persons or entities with any telephone, video or audio surveillance equipment, without the consent of all parties involved.
>
> d. Review telephone toll records of any persons without their consent.
>
> e. Install and utilize telephone pen registers.

[Exhibit 162.]

In addition, when George Wackenhut met with the Chairman prior to the hearing, he informed him that Wackenhut had convened an independent committee of the Wackenhut Board of Directors to undertake a review of Wackenhut's standard and special investigative activities and the operation of the defunct SID. The review included an investigation of Wackenhut's conduct during the Alyeska covert operation as well as an examination of the Committee's hearing record. The independent committee was charged with recommending to the full Board whether Wackenhut should remain in the business of conducting "special" investigations and, if so, what procedures and controls should be in place.

The independent committee's final report was adopted by the Wackenhut Board of Directors on January 25, 1992. [Exhibit 163.] The report recommended that Wackenhut continue providing "special" investigations "only when deemed necessary and subjected to strict internal monitoring and control." Although no specific controls were delineated in the report, it recommended the creation of an investigative manual and a training program for new investigators to acquaint them with acceptable investigative techniques. Those techniques deemed "acceptable" by the independent committee are those which are not only legal, but which also avoid engendering public censure or misunderstanding.

Mercantile Credit

On June 12, 1992, in response to notification by attorney Billie Pirner Garde that several of her clients intended to sue Mercantile Credit Association, Inc. for its role in providing their consumer credit reports to Wackenhut, Mercantile's Vice President, Ronald Liebofsky, voluntarily gave a sworn statement to Garde regarding Mercantile's dealings with Wackenhut. [Exhibit 164.] Liebofsky provided Garde with documentation showing that Wackenhut requested, received and paid for consumer credit reports for Hamel, Scott, Lawn, Adams and Swift during March and April 1990. Liebofsky testified that Black told him the reports were to be used for Wackenhut's pre-employment screening on behalf of its client, Winn-Dixie.[137] [Exhibit 164.]

On June 16, 1992, Liebofsky wrote Chairman Miller to inform the Committee of his statement to Garde and Mercantile's willingness to cooperate in the Committee's investigation of the Wackenhut covert operation. [Exhibit 164.] His letter stated that just prior to Garde's arrival on June 12, Wackenhut's attorneys arrived at the Mercantile office, reviewed the documents he intended to show to Garde and asked questions regarding "how and why the retail credit reports were pulled and provided to Wackenhut." Liebofsky sent a copy of his June 16 letter to Black and to John Mann, a Wackenhut Vice President. [Exhibit 164.]

By letter dated June 18, 1992, Wackenhut Senior Vice President and General Counsel, Clark G. Redick,[138] informed Committee staff that the detailed billings had been "found yesterday at approximately 4:45 PM in a box that was delivered from our dead record storage area." [Exhibit 12.] The bills included a detailed list of expenses incurred during the covert operation and specifically listed the purchase of credit reports. Redick's letter also enclosed an invoice from Mercantile Credit which listed the charges for credit reports on Hamel, Scott, Lawn, Adams and Swift. [Exhibit 12.] Those invoices had not previously been provided to the Committee.

In his June 18 letter Redick stated, "In keeping with the spirit of cooperation, we enclose these documents, as they have just been discovered and we produced them at our earliest possible opportunity." [Exhibit 12.] In a subsequent letter, Redick informed the Committee that the billings were discovered in a "sealed box which also contained a number of other files not related to Investigation No. 427, but several of which were being reviewed by our personnel." [Exhibit 165.] He did not say who placed the billings in that sealed box.

The Scott Case

After learning in or about September 1991 that he had been a target for Alyeska's covert operation and that his termination in October 1990 may have been triggered by his role as a source of information to government agencies through Hamel, Scott filed a complaint with the U.S. Department of Labor ("DOL"). The com-

[137] Liebofsky's partner, Wallace Iroff, also made a statement under oath on June 25, 1992. [Exhibit 164.]

[138] Redick did not begin his employment with Wackenhut until March 1992.

plaint alleged that he was terminated in retaliation for his role as a "whistleblower" and the termination was, therefore, unlawful under the employee protection provisions of various federal environmental statutes. [Exhibit 166.]

In February 1992, during the course of discovery in the DOL proceeding, counsel for Scott produced several documents to Alyeska which clearly originated from the Alyeska and/or Wackenhut files of the covert operation, but which Alyeska had not produced to the Committee pursuant to its subpoena. Alyeska's counsel did produce these documents in March 1992 and informed the Committee that Alyeska had first learned of the documents when produced by Scott in February. [Exhibit 167.]

Upon inquiry, Scott's attorney informed Committee staff that she had additional documents which she received from an unnamed reporter who had in turn obtained them for a confidential source. Those documents were produced to the Committee in April 1992. Although they were clearly from the Alyeska and/or Wackenhut files of the covert operation and had not previously been produced, none of the documents appeared to contain any significant additional information about the covert operation.

During the DOL proceeding, counsel for Scott also attempted to use as evidence of Scott's wrongful termination, a document which had previously been made part of the public record of the Committee's hearing on the covert operation. The document, notes taken by Paul Bilgore, an ARCO attorney, at the October 2, 1990 Owners' meeting, made reference to a recommendation that Scott be terminated. [Exhibit 94.]

Despite its direct relevance to Scott's claim against Alyeska, Alyeska moved to prevent Scott's use of that document asserting that because it contained notes taken by counsel, it was therefore privileged from disclosure. Alyeska further asserted that the document had been produced to the Committee involuntarily, under the compulsion of a supoena and the threat of a citation for contempt of Congress. Thus, Alyeska concluded, it had not waived the asserted privilege with respect to that document. [Exhibit 166.]

In its brief support in its motion to prevent Scott's use of the document, Alyeska made a series of false statements to the Administrative Law Judge regarding its production of documents to the Committee:

> [T]he document came into Scott's hands through the *flagrant abuses* of the privilege by a congressional committee against which there was no practical recourse.
>
> * * * * *
>
> The Committee's act of releasing privileged documents to the press wholly ignored their privileged status, and appears to have been *in violation of its agreement with Alyeska and of the Committee's own rules . . . Seventeen minority members of the Committee signed a letter protesting the majority's actions.*
>
> * * * * *

> *[In blatant disregard of the procedural safeguards required by its own rules,* the Committee released the document to the press and thereby to Scott.
>
> * * * * *
>
> Alyeska and ARCO have taken all reasonable and proper precautions to preserve the confidentiality of the document and should not be penalized in this proceeding because of the *unprincipled conduct* of a congressional committee, over which Alyeska and ARCO had no control.
>
> * * * * *
>
> The Committee refused to agree to absolute confidentiality, but did agree to restrict access to the documents to authorized staff and agreed that no privileged document would be placed on the public record or otherwise disseminated without a vote of the full Committee under the rules governing Executive Session. . . .
>
> [T]he fact that the Committee *subsequently broke its promise and released the document without the agreed upon procedural safeguards* is irrelevant.

[Exhibit 166, emphasis added.]

Although the Committee takes no position regarding the admissibility of the subject documents as evidence in any judicial or executive proceeding, Alyeska's false statements beg comparison to the actual facts of the Committee's negotiations with Alyeska regarding the "privileged" documents.

During October 1991, Committee staff and Alyeska counsel Robert Jordan, discussed the differences in their positions regarding production of documents which Alyeska claimed were privileged from disclosure. The Committee took the position that the "attorney-client" and "attorney work product" privileges are doctrines specifically crafted by courts for application in the judicial system and are not an absolute limit on the scope of a congressional investigation. It is within the Committee's discretion to require production of such documents.

The Committee did not exercise its discretion lightly. As Jordan acknowledged in his October 7, 1991 letter to the Chairman:

> We have been discussing with Ms. Chase and Messrs. Meltzer and Petrich of the Committee staff various issues relating to the attorney-client and work product privileges. It is fair to say that there remain substantial differences of opinion between Alyeska's counsel and the staff on these issues, but we very much appreciate the efforts of the staff to openly discuss with us the Committee's position and Alyeska's position. We have scheduled further discussions of these issues with the staff tomorrow, and we are hopeful that a resolution can be reached that accommodates the important interests of the Committee and Alyeska.
>
> * * * * *
>
> Our discussions have indicated that the Committee does not intend to pursue the "Exxon Valdez" documents as to which a privilege claim had been made. We appreciate the

> Committee's posture with respect to those documents. Ms. Chase has also indicated to me that the Committee does not seek documents relating to the activities undertaken by Alyeska and its counsel in response to your letter to Mr. Hermiller of August 7, 1991.

[Exhibit 141.]

The Committee did not seek the "Exxon Valdez" documents because they were not directly relevant to the matter under investigation. In addition, the Committee permitted Alyeska to delete those portions of attorney opinions which related only to violations of state law. However, the remaining disputed documents were requested because they were the only contemporaneously-created documents which provided necessary and important insight into the reasons why the covert surveillance was undertaken and stopped. The advice obtained by Alyeska and its Owners regarding the legality of the covert operation and their responsibilities as a result of the information uncovered during the covert operation was another important element of the Committee's review. The facts Wackenhut and Alyeska provided to their attorneys as well as the facts they did not provide to their attorneys were also important to the Committee's review of a matter plainly within its oversight responsibilities.

On October 11, 1991, Jordan proposed a resolution of the outstanding issues of privilege. He proposed that the documents be provided to the Committee "as if . . . in Executive Session of the Committee pursuant to the rules governing such sessions." [Exhibit 168.] Under the rules governing executive sessions of investigative hearings, any disclosure of information received in executive session would be permitted only by a Committee vote. [Rule XI, clause 2(k)(7) of the Rules of the House of Representatives.]

After further discussion, the Committee agreed to the executive session provision with the express understanding that, consistent with the rule governing executive sessions, the documents could properly be disclosed in connection with the Committee's hearings or any ensuing report if the Committee voted to permit disclosure. [Exhibit 169.] The agreement Jordan drafted contained a provision expressing that understanding. [Exhibit 168.] Upon reaching that agreement, Alyeska produced the "privileged" documents to the Committee on October 11, 1991.

In preparation for the hearing, the full Committee voted unanimously on October 30, 1991 to permit the disclosure and release of the documents produced by Alyeska on October 11.

> *Be it resolved by the Committee on Interior and Insular Affairs,* That the Chairman, in consultation with the Ranking Minority Member, shall release as he determines to be necessary for use or distribution in connection with the Committee Hearings on November 4 and 5, 1991 (or as they may be continued thereafter) and in any subsequent Committee Print, any or all documents received from Alyeska Pipeline Service Company or its attorneys on or after October 11, 1991. Such documents were produced to the Committee in confidence with the understanding that

> should they be used in connection with the Committee Hearings or in any Committee Print, such use would be specifically authorized by the Committee.

[Exhibit 170.] Representatives of Alyeska and its Owners were present at the October 30, 1991 Committee meeting and obtained copies of the resolution. Alyeska thus cannot credibly claim it was without notice of the Committee's vote.

Furthermore, at the opening of the hearing and in the presence of Alyeska's attorneys, Mr. Young asked for "unanimous consent that Members be permitted to introduce into the record such documents that were produced to the Committee as may be needed to question the witnesses." The Chairman responded: "I am in agreement with you. We will go forward with that, by unanimous consent." [Hearing record, p. 3.]

The facts show that the Committee at all time acted squarely within the terms of its agreement with Alyeska, the Rules of the House of Representatives and the Committee's own rules. At no time did any Member of the Committee "protest" to the Chairman that any document had been improperly entered into the public record.[139]

On November 20, 1991, two weeks after the hearing, the Chairman received a letter signed by 17 Republican Members of the Committee. [Exhibit 171.] The letter requested that additional documents be entered in the record. The letter also stated:

> We also note that with regard to documents received by the committee on or after October 11, 1991, that no determination of their availability for public release was made as required by resolution of the committee. We see no need to raise this as an issue at this time. We mention it only to demonstrate our willingness to cooperate with you to see that the public interest is served by full disclosure in this matter.

This statement is not taken, nor was it apparently intended as a "protest" of an improper entry of documents into the public record.[140] It is understood to address those documents received from Alyeska under the October 11 agreement which were not used at the hearing and which had therefore not yet been entered into the public record. The statement merely reiterates the understanding between the Chairman and the Ranking Minority Member that any further publication of documents would occur only after consultation.[141] It is abundantly clear that as to those documents used by Members of the Committee to question witnesses at the hearing, there had already been unanimous agreement that such documents would become part of the public record.[142]

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[139] In fact, when during the hearing Jordan protested the Committee's release of the Paul, Hastings report, he received no support from any Member of the Committee.

[140] Indeed, Mr. Young issued a press release indicating his agreement with the release of documents to the press. [Exhibit 172.]

[141] The Chairman and the Ranking Member have agreed that all documents, except those documents or portions of documents which contain purely personal and irrelevant information, shall be made part of the public record.

[142] Any member of the public, including the press, may review or obtain copies of any document entered into the record of a public hearing.

Alyeska's strategy in the DOL proceeding was to launch a gratuitous and unfounded attack on the integrity of the Committee in an attempt to cast itself as a "victim" of its "unprincipled conduct."[143] Alyeska obscured the truth in order to prevent the disclosure of information which would damage its legal position and public image. This effort only underscores the need to scrutinize Alyeska's strategy and motives in undertaking the covert operation and selecting its targets.

ANALYSIS

THEFT OF DOCUMENTS/POSSESSION OF STOLEN DOCUMENTS

Alyeska premised its investigation of Hamel on its claim that he received "stolen" documents from Alyeska employees. Yet Alyeska apparently never obtained a legal opinion regarding whether the photocopied documents would be considered "stolen" under Alaska law. This point was discussed by Mr. DeFazio in the hearing:

> Mr. DEFAZIO. Mr. Wellington has made allegations of theft of documents, or assertions I should say, not allegations, assertions of theft of documents. And you go on in the second paragraph to give an opinion on Florida trade secrets law, but you say we have not researched the specific laws of Alaska, Washington, D.C., Virginia, Maryland or other jurisdictions.
>
> Two things: One, I find it peculiar, because the whole justification for going forward with the surveillance and theft of documents from Mr. Hamel's home is they were stolen. Yet you don't render an opinion here on whether or not photocopying documents and distribution of them is a crime in Alaska where I assume Alyeska is . . . headquartered. . . .
>
> Can you tell me, did you subsequently research Alaska on this subject and render an opinion to Mr. Black?
>
> Mr. RICHEY. No, sir, I would have done that at the time I did the PROSS memo. . . .

[Hearing record, p. 184.]

Although the Committee has been informed that the PROSS memo was never done, it is clear that had it been done, it would have been provided to the FBI after the surveillance was completed for the purpose of recommending prosecution of Hamel and others. It was never intended to justify or determine the legality of the undercover operation. Plainly, whether the documents were truly "stolen" was not considered before Alyeska engaged Wackenhut to stop the flow of information to Hamel.

In Alaska, "[a] person commits theft if . . . with intent to deprive another of property or to appropriate the property of another to oneself or a third person, the person obtains the property of another. . . ." Alaska Stat. section 11.46.100(1). Thus, if there is no intent to "deprive" or "appropriate," there is no theft.

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[143] The Administrative Law Judge denied Alyeska's motion to prevent the use of the "privileged" documents and specifically found that there was no evidence that the Committee had improperly or unlawfully entered the document on the public record. [Exhibit 173.]

"Deprive" or "deprive another of property" means to "withhold property of another or cause property of another to be withheld from that person permanently or for so extended a period or under such circumstances that the major portion of its economic value or benefit is lost to that person. . . ." Alaska Stat. section 11.46.990(8).

"Appropriate" or "appropriate property of another to oneself or a third person" means to "exercise control over property of another, or to aid a third person to exercise control over property of another, permanently or for so extended a period or under such circumstances as to acquire the major portion of the economic value or benefit of the property. . . ." Alaska Stat. section 11.46.990(2).

Alyeska has not claimed that its original documents were permanently removed from its premises.[144] It appears that employees who had access to the documents during the course of their business, made copies of the documents and provided them to Hamel, who in turn, provided copies of the documents or information contained in them to various state and federal authorities.[145] Thus, Alyeska was not "permanently deprived" of either the documents or of the information contained in them.[146]

Furthermore, they were not "appropriated" as there has been no claim or evidence that Hamel or anyone else acquired an economic benefit from the documents and information provided to government entities. Alyeska's sole claim is that there was a theft because it considered the information in the documents to be "privileged" and "confidential"; therefore, disclosure of the information permanently deprived Alyeska of the documents' privileged and confidential status.

If a company claims that its corporate "assets" or "trade secrets" have been provided to a competitor resulting in a loss of business, or that its security plans have been provided to a terrorist group, those may well be colorable claims that proprietary information had been "appropriated" or "stolen." However, the documents and information taken from Alyeska were not corporate "assets" or "trade secrets." [147] Alaska apparently has no law governing the taking of documents containing other types of corporate secrets.

> Is obtaining information that in and of itself is of no value—it may be of some embarrassment—but is that a theft? . . . In the standard criminal code, there's nothing like that.

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[144] Mr. Wellington: "I believe all the documents that I saw, sir, were photocopies of original documents." [Hearing record, p. 185.]

[145] While it may be said that the owner of the paper on which the document is copied has been "deprived" of that paper, such "theft" is clearly not what Alyeska hired Wackenhut to stop. In addition, the Committee has been informed that the original documents may have been temporarily removed from Alyeska's premises, copied elsewhere and returned.

[146] Under Alaska law, "property" may include data or information as well as tangible items. Alaska Stat. section 11.81.900(45).

[147] Assets. The entire property of a person, association, corporation, or estate that is applicable or subject to the payment of his or her or its debts.

Trade secret. A formula, pattern, device or compilation of information which is used in one's business and which gives one opportunity to obtain advantage over competitors who do not know or use it. [Citation omitted.] A plan or process, tool, mechanism, or compound known only to its owner and those of his employees to whom it is necessary to confide it. A secret formula or process not patented, but known only to certain individuals using it in compounding some article of trade having a commercial value.

Black's Law Dictionary, fifth edition.

[Anchorage Daily News, "Is oil pipeline critic Hamel a criminal?" (February 2, 1992), quoting Alaska Assistant Attorney General Dean Guaneli. Exhibit 174.]

> I'm fairly confident in thinking that none of our laws were designed to address that situation.

[Exhibit 174, quoting Alaska Assistant Attorney General Margot Knuth.]

The Committee does not take issue with Alyeska's right to protect legitimately proprietary information.[148] However, in this instance, Alyeska appears to have been aware from the outset that it was dealing with a "whistleblower" and not a thief. [Appendix to hearing record, p. 482.] In addition, the documents are alleged to contain evidence that Alyeska and its Owners were engaged in activities which may have violated environmental, health and safety laws. Evidence of such violations is neither "proprietary" nor a "trade secret," no matter how secret Alyeska may wish it to be.

Furthermore, the fact that the incriminating information appears in documents created by or for Alyeska's attorneys does not by itself make its disclosure a crime. The "attorney-client privilege" is an evidentiary rule promulgated by the judiciary to foster an effective adversary system.[149] It prohibits the forced disclosure or use during litigation of communications between an attorney and his or her client. The "attorney work product privilege" is also a judicially-created evidentiary rule. It discourages, but does not totally prohibit, the forced disclosure during litigation of an attorney's work product when it can be shown that the work was done for the client during or in anticipation of litigation. Neither of these evidentiary rules applies outside the judicial adversary system, except to the extent that state courts have also promulgated codes of ethics which prohibit attorneys form disclosing their own clients' secrets.

These evidentiary rules and codes of ethics do not make criminals of non-lawyer employees or third parties who have access to information [150] about violations of law and disclose that informa-

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[148] Although Wellington apparently believes that all documents created by Alyeska are "stolen" if released without specific authorization from Alyeska, Smith recently stated that he was only concerned by the "theft" of attorney-client documents. Regarding the other documents, Smith told the Anchorage Daily News: "Alyeska is an open company, a regulated company. Anybody with any interest in any relevant document is always going to see that [document]." [Exhibit 174.] The government's right of access to Alyeska's documents is expressly provided in section 25 of the Federal Right-of-Way Agreement.

[149] The role of the "attorney-client privilege," while important, is antagonistic to the end goal of finding truth.

> While the aim of the adversary system is to arrive at the truth, the means it employs are designed to promote individual autonomy and to maximize individual control over the gathering and presentation of his or her case, whether directly or through an advocate, subject to the advocate's ethical duty to impose certain limits on the client's choices.
>
> The rights protected by the attorney-client privilege, however, appear to conflict directly with the adversary system's goal of discovering truth. Unimpeded access to an adversary's evidence increases the available amount of evidence, improving the search for the truth; therefore, the operation of any testimonial privilege, shielding some communications from evidentiary admissibility, appears to hamper this pursuit.

[Attorney-Client Privilege, Memoranda Opinion of the American Law Division, citing 33 Hastings L.J. 495 (1982). Committee Print 98-I, p. 15, Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce, U.S. House of Representatives, June 1983.]

[150] "If someone who had access to the documents, or as far as Hamel knew had access to the documents, and gave it to him, clearly that's not an offense. . . . But if he talks someone into

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tion to government officials.[151] It is axiomatic that a citizen, including an Alyeska employee, who comes across information evidencing a crime has a right, if not an obligation, to make it known to authorities. In fact, federal law encourages employees to report violations of environmental laws and regulations by prohibiting retaliation against employees who do so.[152]

Alyeska cannot convert its employees' exposure of unlawful acts into the crime of theft simply by deeming all evidence of those illegalities to be "confidential" or "privileged." In addition, the Committee does not believe that the mere fact that Alyeska's employees used Hamel and perhaps others as intermediaries to the government transformed their disclosures of violations into thefts. Although Hamel is not a government official, the Committee has been informed that his "sources" are too fearful of retaliation to risk making their identities known by bringing the information to government officials directly.[153] They provide the information to Hamel because of his proven ability to bring it to the attention of those federal and state officials who are able and willing to take appropriate action. Unfortunately, it appears that these employees believed they would suffer retaliation despite the statutory prohibition.

There have been assertions, by Alyeska, Wackenhut and their attorneys, that the possession by the Committee or its staff of documents or information Hamel obtained from Alyeska is a crime.[154] No specific allegations have been made that the Committee is or has ever been in possession of any such documents; nonetheless, the subject merits discussion because it strikes at the heart of this or any other congressional committee's investigative and oversight authority.

The Committee is specifically charged with the responsibility to oversee Alyeska's operation of the trans-Alaska pipeline and is responsible generally for overseeing oil industry activities on federal lands. Those responsibilities include determining whether Alyeska and its Owners are in compliance with the federal statutes and regulations which govern them. In order to meet its responsibilities,

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sneaking into (an office in the) middle of the night, violating a bunch of security arrangements, where this person wouldn't normally have access to it, into a locked cabinet and took the document under those circumstances, it might well constitute a theft. . . ." [Exhibit 174, quoting Dan Hickey, former chief prosecutor for the State of Alaska.]

[151] "Whistleblowers almost always persuade Congress and regulators to take action through the use of documentation. Rarely is an agency willing to act based upon the mere word of a worker." [Exhibit 174.] While there may be some question whether the attorney-client documents could be used in any litigation commenced regarding the allegations contained in them, the documents may be the only means of convincing regulators that some action is needed.

[152] See, Toxic Substances Control Act, 15 U.S.C. 2622; Comprehensive Environmental Recovery and Compensation Liability Act ("Superfund"), 42 U.S.C. 9610; Water Pollution Control Act, 33 U.S.C. 1367; Solid Waste Disposal Act, 42 U.S.C. 6971; Clean Air Act, 42 U.S.C. 7622; Energy Reorganization Act, 42 U.S.C. 5851; Safe Drinking Water Act, 42 U.S.C. 300-j-9.

[153] Hamel may not always have received documents and information directly from an Alyeska employee. Apparently, the route was sometimes more circuitous. At times Hamel was not aware of whom the original source might be. However, where the intent was to use Hamel as a conduit to provide information about environmental wrongdoing to U.S. EPA, the Justice Department or Congress, we believe the result is the same.

[154] In addition, Richey stated that a Committee Member or staff employee who is an attorney and who accepts possession of a document containing the privileged communications of another attorney and his client, would be subject to disbarment. [Hearing record, p. 141.] Richey's statement is neither supported by law nor by any provision of the American Bar Association's Code of Professional Responsibility.

the Committee must necessarily seek out information relating to Alyeska's efforts to comply with the law.

The suggestion by some that in discharging its responsibilities, the Committee must rely only upon information which Alyeska chooses to provide, mocks the Committee's investigative authority and renders all congressional oversight totally ineffective. It also flies in the face of 220 years of congressional experience. This is not a "new" issue. Congress has been fighting this battle with those it oversees for the entire history of the Republic.

In passing the environmental legislation of the past several decades, Congress recognized that enforcement of those laws as well as its own ability to determine their effectiveness depended in large measure on internal information provided by industry employees. The House report on the Clean Air Act observed:

> The best source of information about what a company is actually doing or not doing is often its own employees, and this amendment would insure that an employee could provide such information without losing his job or otherwise suffering economically from retribution from the polluter.

[House Report (Interstate and Foreign Commerce Committee) No. 95–294, May 12, 1977, p. 1404; Exhibit 175.]

Thus, if in the course of his business, an Alyeska employee has access to information which he believes evidences his employer's violation of law, he may lawfully relay it to any government authority with jurisdiction to act. Such information is not "stolen." The person who receives that information does not possess "stolen" property whether or not he is aware that Alyeska did not voluntarily disclose the information.

The EPA, the Justice Department and the court in *Alyeska* v. *EPA* defended Hamel's possession of documents received from Alyeska employees. [Exhibit 66.] Moreover, the U.S. Attorney noted that "Hamel selected and submitted the particular twenty-two documents at issue in this case from a much larger number of such documents that he has in his possession." [Exhibit 66.] [155]

In fact, Richey recognized the Committee's right to receive even "stolen" documents. In his May 22, 1990 opinion letter to Wellington, Richey analogized the Committee's investigatory role to that of a police officer who passively receives stolen evidence of a crime. Richey concluded that in both cases, the receipt of stolen evidence is not itself a crime.

> In order to demonstrate that the Congressman is acting improperly, you will need to show more than the mere receipt of stolen documents. Regardless of the substantive content of the stolen documents, the Congressman would not be acting illegally if he received stolen documents for the purpose of using them in an official investigation.

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[155] In that case, Alyeska submitted an affidavit to the court prepared by Exxon lawyer Kenneth Fountain which portrayed Hamel as an extortionist "attempting to use unorthodox means to obtain personal enrichment." The court ignored this argument in reaching its decision to protect the documents from disclosure to Alyeska. [Exhibit 66.]

[Appendix to hearing record, pp. 455–456.] [156] Richey's letter points out that it would be illegal for the police officer or the congressman to actively encourage theft. However, he failed to distinguish between the theft of trade secrets and the disclosure to Congress of evidence of pollution or other statutory violations. The importance of that distinction is obvious. Since disclosure of environmental wrongdoing by employees is actively encouraged by statute, its disclosure is by definition not a theft.

In a letter to the Committee, Richey attempted to support his testimony at the November hearing that Hamel had admitted the documents he received from Alyeska employees were "stolen" and, therefore, that Hamel was guilty of knowingly possessing stolen goods. [Exhibit 176.] The letter was submitted in response to the Chairman's request that Richey provide citations to any documents or tape recordings containing Hamel's alleged admissions. However, Richey's letter did not provide even one example of such an admission. Richey referred instead to Black's characterization of the documents and his conversations with Hamel. It was Black, not Hamel, who stated that the documents had been "stolen." [157] [Exhibit 176, tab 3.] [158]

There is no question that Hamel knew he was receiving documents which Alyeska would not voluntarily have provided either to him or to government authorities. It is apparently on this basis that Richey concluded that Hamel knew the documents were "stolen."

However, Richey's letter and its attachments show that the documents Hamel had in his possession contained information regarding pipeline corrosion and instability which Alyeska allegedly concealed from government authorities, illegal vapor emissions at the Valdez terminal, illegal dumping of waste oil by Exxon as well as other alleged illegal activities. Hamel told Black that his sources voluntarily provide him with those documents because they don't like what is going on at Alyeska.[159] [Exhibit 176, tab 5.] That is

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[156] Richey, a former prosecutor, is of late apparently of the opinion that the use of such evidence by a congressman, and presumably also by a prosecutor, while legal and used in the course of executing their public responsibilities, is nevertheless "immoral and may be unethical." [Appendix to hearing record, p. 456.] The Committee does not agree. Exposing violations of the nation's environmental laws using legally obtained evidence is an entirely moral and ethical occupation. Richey does acknowledge that the public may also disagree with him. [Appendix to hearing record, p. 461.]

[157] Wellington suggested that Black's assertion that Hamel knew he possessed "stolen" Alyeska documents was based upon "the definition that Mr. Black placed on the documents when he was told by Mr. Hamel that he had received this information surreptitiously from Alyeska employees." [Exhibit 3, p. 496.] Thus, even Wellington does not believe that Hamel told Black the documents were "stolen."

[158] Richey stated in this exhibit that Hamel had "openly displayed to one Wackenhut investigator unopened Alyeska mail in his possession." He attached as proof of that statement, Jacobson's notes of her conversation with Hamel on the plane from Anchorage in March 1990. However, Jacobson's notes state only that "[h]e showed J. un-opened mail that he says he gets from sources w/i Alyeska and he showed J. memo directed to terminal personnel." There is no indication that the "unopened mail" belonged or was addressed to Alyeska. In fact, Jacobson did not see to whom the envelopes were addressed. A more reasonable reading of the notes suggests that a terminal employee sent Hamel a copy of a memo distributed by Alyeska to its terminal employees. [Exhibit 176, tab 3.]

[159] Richey stated in his letter that Hamel sometimes "actively solicited stolen documents." [Exhibit 176.] However, the only evidence he provided was a statement by Hamel that he "wanted to ask [his source] to see if she could get another round of the stuff." That Hamel may have wanted to ask for documents is not the same as his actually asking for them. In fact, he stated consistently throughout the videotaped conversations with Black that he never asked for

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precisely what Congress anticipated when it provided protection for employees who expose their employers' illegal activities.

HAMEL'S RELATIONSHIP WITH THE COMMITTEE

In his memoranda to Wellington and his conversations with Richey and Goodman, Black made several assertions that Hamel provided gifts and/or campaign contributions allegedly as "bribes" to Chairman Miller and Committee counsel, Jeff Petrich. Only two of these assertions are based upon statements actually made by Hamel. The others stem from a misunderstanding of Hamel's statements, are from an unknown and undisclosed source or are pure fabrications. Nonetheless, they were the subject of conversations at meetings between Alyeska and Wackenhut, at the Owners' meetings, and in discussions with Alyeska's and Wackenhut's attorneys. Alyeska and its Owners even paid attorneys at Paul, Hastings to analyze the effect of these alleged violations on Alyeska's duty to report wrongdoing. [Appendix to hearing record, p. 598; Exhibit 177.]

In fact, Hamel has never made either a gift or a campaign contribution to Congressman Miller. The only things of value Hamel has provided to Petrich are his "personal hospitality" and an occasional dinner.[160] Both are excepted from the term "gift" for the purposes of House Rule XLIII, clause 4 which currently provides: [161]

> A Member, officer, or employee of the House of Representatives shall not accept gifts (other than the personal hospitality of an individual or with a fair market value of $100 or less) in any calendar year aggregating more than [$250] directly or indirectly from any person (other than from a relative) . . . .

One of the allegations stems from Hamel's statement to Black that Miller stayed at Hamel's home during the Committee's *Exxon Valdez* hearings in 1989. That statement is correct. The Committee requested help from the U.S. Coast Guard and State of Alaska officials in locating hotel space, but because of the burden put on such resources in the wake of the oil spill disaster, only very limited hotel space in Valdez was found. When Hamel learned of the problem, he offered the Committee use of a house he had rented in Valdez and also arranged for the Committee's use of another house. In all, 17 people stayed in accommodations arranged by Hamel, including Members of Congress, majority and minority staff, other House employees and military escorts. The U.S. Government reimbursed Hamel for his expenses. [Exhibit 179.]

Hamel first met Congressman Miller when he stayed at Hamel's rented house during the May 1989 hearings in Valdez. Hamel met

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documents. "I never asked her. She offered, I wouldn't do it . . . And we don't even talk to each other any more. I don't want to talk to anybody. When I can't control what happens to the people when they lose their job, this, widow, not a widow but a divorced gal with a couple of kids, I mean, I don't want anything from that woman, ever." [Exhibit 176.]

[160] Hamel and his wife have paid for some dinners; Petrich and his wife have paid for others. [Exhibit 178.] Whether on an individual or aggregate basis, the amounts Hamel paid did not exceed the dollar limits of the rule.

[161] Earlier versions of the rule provided lower gift limits and aggregates.

and spoke to Miller again at a campaign event for which Hamel and his wife had been given complimentary tickets. Hamel has had no other conversations with Congressman Miller at any time. [Exhibit 178.]

Another of the allegations is based upon Hamel's statement to Black that he was working on a plan to have the Committee hire a ship safety expert as a Committee staffer for $1 a year in order to help Congressman Miller "set up" Exxon during an inspection of an Exxon ship docked in Miller's district. Had the expert actually been hired at that salary, it would have been in violation of House Rule XV, which prohibits "private contributions of in-kind services for official purposes." [See, Select Committee on Ethics Advisory Opinion No. 6.] However, no such expert was hired or was even offered a job on the Committee staff at any salary. Nor was Congressman Miller even made aware of any "plan" for him to board an Exxon ship.

During one of his videotaped conversations with Black, Hamel stated: "I paid, between you and me, I ha[d] the Chief Counsel for Alaska to Alyeska at my expense." [Exhibit 84.] Hamel was referring to Petrich's 1989 visit to Alyeska. Hamel had encouraged Petrich to make a surprise visit to Alyeska's Valdez terminal in order to observe safety violations. [Exhibit 178.] However, regardless of his statement to Black, Hamel did not pay for the trip. Hamel has explained that in his effort to impress Black he exaggerated his influence with the Committee and its staff and made some statements which were not true. [Exhibit 177.] His assertion that he paid for Petrich's trip to Alyeska may reflect the urgency he attached to the trip, but it is nonetheless not true.

During a later videotaped conversation with Black, Hamel told him that Petrich and his wife had gone to Alaska on vacation, and that he had arranged for Petrich to spend some time fishing, camping and hiking with mutual friends. [Exhibit 85.] Hamel neither paid for the Petrichs' vacation, nor told Black that he had paid for it. Black apparently confused Hamel's statement about Petrich's 1989 trip to visit the Alyeska terminal with his statement about Petrich's 1990 vacation in Alaska and falsely reported to Wellington that Hamel had paid for Petrich's vacation. He did not. [Exhibit 178.]

Finally, in Richey's January 17, 1991 opinion letter to Wellington, he stated that "during one of the taped interviews, Mr. Hamel said he had paid for Congressman Miller and his family to travel to Alaska." [Exhibit 104.] Richey informed Wellington that such a payment would be in violation of federal statutes governing campaign financing. In fact, if Hamel had actually paid for the congressman's vacation, it would also be a violation of House Rule XLIII, clause 4, the "gift" rule.

However, not only has Hamel never paid for any trip taken by Congressman Miller or any member of his family, whether to Alaska or to any other place, but none of the videotapes, audiotapes, transcripts or documents produced to the Committee by Wackenhut and Alyeska contain such an allegation by Hamel or anyone. Alyeska and Wackenhut have assured the Committee that

complete copies of all the taped conversations with Hamel have been produced.[162]

These statements have absolutely no bearing on Alyeska's alleged search for the sources of stolen documents. They were apparently seen as an opportunity to enlarge the scope of the covert operation. Although the Committee has been told that Richey never completed the "pross memo" for the FBI, given his advice to have the FBI address allegations relating to Congressman Miller and Black's "goal" to have both Hamel and Miller indicted, it is not unreasonable to conclude that the "pross memo" was expected to cover any and all violations of law which could be alleged against Hamel and Miller or his staff.

It is clear that Black lost no opportunity to quiz Hamel on and off camera about his relationship with Miller and Petrich.[163] Black plainly believed he had obtained political "dynamite." In fact, Jacobson told the Committee that when the Committee began its investigation, Black told her that "when Mr. Miller, the committee, gets the tape, the whole investigation will stop." [Executive session transcript, p. 126.] He could not have been further from the truth.

EXTORTION

Alyeska has for years responded to Hamel's allegations regarding Alyeska's and Exxon's violations of environmental, health and safety laws by attempting to paint Hamel as an extortionist who threatens to expose their illegal activities unless he is paid a multimillion dollar settlement of his claims against Exxon. During the undercover operation, Black made many attempts to get Hamel to admit on tape that he was motivated only by money. However, Hamel consistently stated that he is motivated not only by the way he believes Exxon cheated him out of his business, but also by the way Exxon and Alyeska treat their employees and the environment. He said over and over again that he would be able to retire from his activities if he were paid what he believes is owed to him; if Alyeska would implement a health plan which will help those workers exposed to dangerous conditions in the work place; and if Alyeska and Exxon would stop polluting the environment. [Exhibits 65, 79, 84, 85.]

Predictably, this tired characterization of Hamel as an extortionist arose again at the Committee's hearings in November 1991. Richey repeatedly testified that in his opinion, Hamel is an extor-

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[162] Richey never reviewed the videotape transcripts. [Hearing record, p. 140.] It is unclear whether or to what extent he reviewed the videotapes themselves. At the hearing, Richey first stated that he had "looked at" some videotapes in his office and in Wackenhut's office. [Hearing record, p. 140.] Later in the hearing, Richey stated: "Today as yet I still have not looked at the tapes." [Hearing record, p. 171.] Again later in the hearing, Richey implied that he had never "reviewed" or "looked at" the videotapes personally.

> [W]hat I said in terms of the tapes is, I want the tapes prepared so I can review them. . . . Mr. Black has to go over every one of those and authenticate it, turn it into what it is that it actually says from the person participating, and certify that to me so it is authenticated to my satisfaction before I [am] even willing to sit down to look at them. That is the way I do it.

[Hearing record, p. 191.] Black never authenticated the videotapes before the Owners called a halt to the covert operation.

[163] In addition to Black's on-camera queries, Hamel stated that he had many conversations with Black which were apparently not recorded and that during those conversations, Black frequently sought information about Miller, Petrich and other members of the Committee or its staff. [Exhibit 178.]

tionist. [Hearing record, pp. 142, 158, 164.] Asked to provide factual support for his opinion, Richey submitted a post-hearing statement with several documents which Richey stated supported his view including memos written by Black and by Alyeska's attorneys and excerpts from Black's videotaped conversations with Hamel. [Exhibit 180.] However, the documents show only that Hamel is motivated by his belief that he had been cheated by Alyeska, and also by his belief that Alyeska and its owners have spoiled the environment and disregarded the health and safety of its workers.

Hamel's problems with Alyeska began in 1980, when he discovered that oil he had been supplied through the pipeline was significantly diluted with water. As a result, he lost his clients and ultimately his business. When Alyeska and its Owners blamed the problem on malfeasance at the Panama Canal, Hamel began an investigation to pinpoint the cause of his loss. [Hearing record, pp. 267-268.]

Hamel's investigation not only convinced him that Alyeska had cheated him, but also that the Alyeska Owners were aware of the problem and had denied the truth. Hamel filed an administrative complaint with the Alaska Public Utilities Commission in order to pursue his dispute over the watered oil. [Hearing record, p. 269.]

Hamel's independent investigation also turned up numerous instances of what he termed was "the dismal performance of Alyeska in regards to their commitment to environmental and worker safety." [Hearing record, p. 269.]

> I realized that I was not the only victim of the dishonesty of the oil industry in Alaska—we were all victims, and no one was doing anything about it. We were living in a conspiracy of silence waiting for an environmental disaster to occur and, as you know, it did. I decided that I had to do something to prove to the public that the oil industry had violated their legal and moral obligations to Alaska. The more I heard, the angrier I got about what was going on.

[Hearing record, p. 269.]

Aware of Hamel's anger, Alyeska's employees began sending him a continual stream of information to help him prove what they believed were their employer's environmental, worker health and safety violations. Hamel conveyed the information to U.S. EPA, the Justice Department and both houses of Congress and filed citizen's actions against the industry. [Hearing record, pp. 268-272.]

Hamel testified that in 1985, Alyeska approached him "to find out what it would take to make me go away." [Hearing record, p. 272.] Thus, on May 14, 1985, Hamel's attorneys met with Alyeska's counsel to discuss settlement of all Hamel's pending and anticipated claims and actions. Hamel's attorneys proposed that Hamel be compensated for the loss of his business and for the costs of his investigation. They proposed that he would then withdraw his protest before the Alaska Public Utility Commission. Hamel also wanted Alyeska to work with him to rectify the environmental problems he had discovered. If they agreed to do so, he said he

would agree not to take any further action against Alyeska.[164] [Exhibit 180, attachment 1.]

There is simply no evidence that Hamel has ever attempted to "extort" money from Exxon or Alyeska. An extortionist is one who demands money while threatening physical, legal or economic harm if he is refused. At the hearing, Richey explained:

> A number of years ago in Florida I prosecuted a lawyer who was extorting a local developer, and I charged the lawyer with extortion because he went to the developer and said you are going to hire me as your lawyer and you are going to give me a big retainer and you are going to pay me so much money. If you don't, I will organize protests against your development. I'm going to go to the planning and zoning commission. I will file environmental complaints. I'll go to the county commission, and I will shut you down. He raised all kinds of defenses when we prosecuted him of his first amendment rights and he was a good guy and everything else, but he was convicted and the Supreme Court of Florida sustained that conviction.

[Hearing record, p. 182.] There is no evidence that Hamel ever made such threats to Alyeska or Exxon.

It is not extortion to disclose evidence of wrongdoing and then demand that it be righted. Nor is it extortion to respond to an invitation to settle pending claims by proposing settlement terms which include monetary compensation for losses.[165]

As Hamel stated at the hearing:

> I refuse to believe that the only way to advocate for a clean environment and regulatory compliance is to take a vow of poverty and join a not-for-profit environmental organization. I also refuse to believe that I must choose between pursuing the economic damage that I have been caused by Exxon and the other Alyeska owners and insisting that they clean up their environmental act.

[Hearing record, pp. 277–278.]

Furthermore, under Alaska law, "a person commits the crime of extortion if the person obtains the property of another . . ." Alaska Statutes, section 11.41.520 (a). There is no extortion where the property is not obtained. Since Alyeska did not pay money to Hamel, there has been no extortion.

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[164] This is the only alleged instance of attempted "extortion" Alyeska claims occurred. [Exhibit 92: "No extortion attempt since 1985."]

[165] Exhibit 179 attaches as tab 4, a May 1, 1990 memorandum from Eric Redman, one of Alyeska's outside attorneys, to Alyeska's General Counsel, Fred Smith, about a conversation he had with Hamel's attorney, Julian Mason. Richey represents the memo to be evidence that Hamel is an extortionist. However, not only does the memo not contain any threat by Hamel, or even any word spoken by Hamel or purportedly on his behalf, it is admittedly pure speculation about what Redman thinks Mason might have meant.

> Had the conversation been transcribed, no one reading the transcript would be able to say for certain that Julian was really making a proposal or even extending a feeler. In fact, for all I know, Julian may merely have been trying (1) to make me feel uncomfortable . . ., or (2) genuinely to give advice . . . that Alyeska should continue to expect trouble from Hamel unless Alyeska continues to "make progress . . ."

[See also, Anchorage Daily News article attached as Exhibit 174, which contains interviews with Mason and Redman regarding this memorandum.]

In addition, it is a defense to extortion "that the property obtained by threat of accusation, exposure, lawsuit, or other invocation of official action was honestly claimed as restitution or indemnification for harm done . . ." Alaska Statutes, section 11.41.520 (c). There is no doubt that Hamel honestly believes that Alyeska and Exxon owe him money as indemnification for harm done.

There is also ample evidence that Hamel was motivated to expose Alyeska's alleged violations as a public service. Black believes that even if Hamel were to get his money from Alyeska, Hamel would "still have his sources and funnel information to the EPA, the media and anyone else who will listen for as long as he Hamel lives." [Appendix to hearing record, p. 685.] Even Wellington, when questioned by attorneys from the Paul, Hastings firm stated that it "never was unequivocally established" that Hamel was interested in dropping his charges against Alyeska in exchange for a money payment. [Appendix to hearing record, p. 659.]

Contrary to Black's report to Alyeska at the September 20, 1990 meeting that Hamel would continue to embarrass Alyeska and Exxon until he is paid for his loss, Black's September 18, 1990 memorandum of his conversation with Hamel makes clear that Hamel told Black he did not want to pursue allegations of illegal dumping by Exxon until after his hoped-for settlement with Exxon. [Exhibits 24, 88.] Hamel not only fully expected to continue his efforts to expose pollution, but he plainly did not want to "threaten" Exxon.

INVESTIGATIVE TECHNIQUES

Telephone Tolls

From at least March through July 1990, Lund purchased long-distance telephone toll records for Hamel and at least 5 other individuals.[166] The records are in some instances contained on computer-generated documents clearly marked "AT&T Proprietary." In other instances, the toll records were obtained orally and written in Lund's notes. [Exhibits 20, 29.]

Lund claims to have purchased the toll records legally through ordinary commercial channels, *e.g.,* Ron Eriksen, an unlicensed private investigator working out of Tucson, Arizona whom Lund apparently claims to have thought was working under a contract with the "Virginia telephone company" and therefore was somehow authorized to sell AT&T records.[167] [Appendix to hearing record, p. 581; Exhibit 19 and table B to Exhibit 181.] C&P Telephone Company of Virginia has denied any association with Eriksen.

Under federal law a telephone company may sell or otherwise disclose individual customer toll records or any other telephone

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[166] Lund listed the amounts paid for these records on his time sheets. We assume he was reimbursed for his expenses by Wackenhut and that Wackenhut included those costs in its monthly billings to Alyeska.

[167] While C&P Telephone would have access to records of long-distance calls made from Hamel's Virginia telephones, Lund's contact with C&P Telephone would not explain how he obtained toll records for telephones in Connecticut, Washington (state) and Alaska. There is no indication in any statement made by Lund that he had legal means of obtaining records in those states or that he had a legal commercial source at AT&T, MCI, Sprint or any other long distance company.

records to a third party, other than a government entity, without restriction. However, individual telephone company employees may not disclose customer records without permission or the command of some lawful authority. [See, the Communications Act,[168] the Electronic Communications Privacy Act,[169] their legislative histories, and the relevant cases and commentators.][170]

Pursuant to a corporate policy, AT&T undertakes to maintain the privacy of its customer records and does not permit them to be sold by anyone. [Exhibit 182.] As part of that policy, AT&T has entered into agreements requiring local exchange carriers, such as C&P Telephone of Virginia, to keep AT&T's customer records confidential. [Appendix to hearing record, p. 603.] In addition, the Federal Communications Commission requires AT&T to notify each customer annually in writing of its policy to keep customers' telephone records confidential. [Exhibit 183.]

In his testimony at the hearing, Richey stated that AT&T regularly gave "contractors and subcontractors" access to its customers' private toll records, which they then sold to private investigators across the country with AT&T's knowledge and acquiescence. Richey did not provide any examples of such access and qualified his statement as his suspicion, understanding, belief and theory. [Hearing record, pp. 133, 144, 145.]

Asked to respond to Richey's assertions, AT&T stated that contrary to Richey's testimony, "AT&T aggressively maintains the confidentiality of its records." [Exhibit 184.]

> If Wackenhut or Mr. Richey is aware of any instances in which an agent, or employee, of a telephone company has disclosed toll records to any private investigator in a manner inconsistent with that company's policy, they should provide the facts related to such instances to AT&T, or the appropriate telephone company, immediately. By disclosing those facts, Wackenhut or Mr. Richey would perform a significant service to this Committee and to the telecommunications companies working hard to protect the privacy of their records.

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[168] "[N]o person receiving, . . . transmitting . . . any interstate or foreign communication by wire . . . shall divulge . . . the existence . . . thereof, except through authorized channels of transmission or reception, (1) to any person other than the addressee, his agent, or attorney, (2) to a person employed or authorized to forward such communication to its destination, (3) to proper accounting or distributing officers of the various communication centers over which the communications may be passed, (4) to the master of a ship under whom he is serving, (5) in response to a subpoena issued by a court of competent jurisdiction, or (6) on demand of other lawful authority. . . ." 47 U.S.C. 605.

[169] "[A] provider of electronic communication service [e.g., a telephone company] . . . may disclose a record or other information pertaining to a subscriber . . . or customer . . . to any person other than a government entity." 18 U.S.C. 2703(c)(1)(A).

[170] See, *United States* v. *Russo*, 250 F. Supp. 55, 58–59 (E.D.Pa. 1966); *Bubis* v. *United States*, 384 F. 2d 643, 646 (1967); *United States* v. *Covello*, 410 F. 2d 536 (2d Cir. 1969); *United States* v. *Cerone*, 452 F. 2d 274 (1971); *United States* v. *Baxter*, 492 F. 2d 150 (9th Cir. 1973); *United States* v. *Finn*, 502 F. 2d 938 (7th Cir. 1974); Electronic Communications Privacy Act: Hearings Before the Subcomm. on Courts, Civil Liberties, and the Administration of Justice of the House Comm. on the Judiciary, 99th Cong., 1st & 2d Sess. 415–16 (memorandum of James S. Golden, Southwestern Bell Corp.), 123–24 (statement of Neal J. Amick, AT&T division manager); H.R. Rep. No 647, 99th Cong., 2d Sess. 9–10, 34 (1986); Electronic Communications Privacy: Hearing Before the Subcomm. on Patents, Copyrights and Trademarks of the Senate Comm. on the Judiciary, 99th Cong., 1st Sess. (1985); S. Rep. No. 541, 99th Cong., 2d Sess. 38 (1986); Fishman, Wiretapping and Eavesdropping, section 456 (1989 Supp.) cf., Carr, The Law of Electronic Surveillance, section 4.10(a), 3.2(c)(2)(A) (1989).

[Exhibit 184.]

The Committee does not doubt that neither AT&T nor C&P Telephone voluntarily disclosed customer telephone toll records to Lund, Eriksen or any other private investigator. Nor is there doubt that AT&T and C&P employees and contractors were not authorized to disclose or sell those proprietary records.[171] Any unauthorized disclosure or sale of such records should, therefore, be considered a theft of AT&T's proprietary information.[172]

Whether Lund, Black, Wellington or anyone else involved in obtaining toll records may be guilty of receiving or soliciting stolen information may depend upon whether they were aware the information was stolen. [See, e.g., Florida Stat. Ann. section 812.014.] Given their experience in law enforcement and private investigation, it is reasonable to conclude that they knew or should have known that a private investigator could not obtain telephone toll records legally through ordinary commercial channels. It is particularly revealing that they made no attempt to obtain the records themselves from AT&T or any other telephone company, but went through an unlicensed Arizona investigator who has since gone out of business.[173]

In fact, the book How To Get Anything on Anybody,[174] apparently used by Wackenhut's SID to train new investigators, contains a chapter titled "Procuring Confidential Telephone Company Information" which advises how to obtain "inside" information from the telephone company. [Appendix to hearing record, p. 402; executive session transcript, p. 86.]

> There are several methods which some persons use to obtain telephone company "inside" information. All of these methods rely upon the investigator passing himself off as a person who has the right to said information.
>
> * * * * *
>
> TO GET AN ENTIRE TOLL LISTING
>
> An enormous amount of information can be gotten from the last month's toll information of a target's bill. Just the numbers and areas called can often b[e] a help, using the CNA procedure you can piece together an entire scenario of a month's communication.
>
> The bad news is that it's a bit hard to get this; the method most commonly used is to call the customer service number for that prefix (as above) and explain you're

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[171] The telephone toll records are proprietary in the truest sense: (1) the records have obvious commercial value which belongs to AT&T; (2) AT&T keeps its customer records confidential as a service to its customers, therefore providing it with a competitive advantage over any telephone service provider which does not do so; (3) none of the toll records contain evidence of a crime or any violation of law or regulation by AT&T.

[172] An article in The Washington Post on May 22, 1992 indicates that at least one federal prosecutor believes it is illegal to purchase private telephone records. [Exhibit 185.]

[173] Wellington stated at the hearing that none of his attorneys informed him that obtaining the toll records was illegal. [Hearing record, p. 160.] However, there is no evidence that Wellington, Black or Lund ever asked any attorney to give advice specifically regarding the legality of obtaining telephone tolls. In fact, no attorneys were consulted at all until the telephone toll purchases had been underway for some time. Richey's after-the-fact opinions expressed at the hearing must be viewed in light of his position as an advocate for his client(s).

[174] Copyright 1987 by Lee Lapin (CEP, Inc., Boulder, CO).

> having a dispute with roommates and lost your copy of last month's bill, would they send you another.
>
> Telco will normally want to send it ONLY to the address listed on the bill, but you can ask that it be sent to your work address, or if the phone is now disconnected, to your "new" address, BUT YOU MUST BE THE PERSON LISTED ON THE BILL.

[Appendix to hearing record, pp. 419–420.] [175] In short, a private investigator may obtain toll records from the phone company only by fraud and/or theft. An experienced investigator receiving such records from another investigator should at the very least have strongly suspected he was dealing with stolen information.

Credit and Financial Reports

In March and April 1990, the Wackenhut agents obtained credit reports on Hamel, Scott, Swift, Lawn, Kenneth Adams [176] and possibly other individuals.[177] [Exhibits 12, 44, 164, 186, 187.] They obtained those credit reports from Mercantile Credit Association, Inc. in Fort Lauderdale, Florida. [Exhibit 164.]

Lund also obtained Hamel's bank balance by providing his source with Hamel's social security number and date of birth. [Exhibit 52.] Lund obtained information about Hamel's "interest accounts" by paying a source $85. [Exhibit 50.] Although Lund apparently did not obtain this banking information about Hamel from Mercantile Credit, such information is often available through credit bureaus.[178]

As explained in How To Get Anything on Anybody:

> Anyone who has ever applied for credit, in any form, should be on file with a credit bureau. Almost every town has at least one credit bureau; local merchants join the bureau or agency for a fairly reasonable fee and then have

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[175] In many cases, Lund received actual AT&T computer records and not merely a duplicate copy of a target's telephone bill. Counsel for AT&T has informed the Committee that the portion of the computer record which identifies the AT&T employee or contractor who retrieved the record from the computer has been removed from the document. The Committee does not know whether Lund received the document without the identifying information or removed it himself. Whoever removed it was likely attempting to avoid detection.

[176] It is unclear which of three persons named Kenneth Adams was the target of Wackenhut's credit report probe. One Kenneth Adams is the Seine Division Chairman of Cordova District Fishermen United and testified before Chairman Miller's hearing on the *Exxon Valdez* oil spill on May 7, 1989. Another Kenneth Adams is a Washington D.C. attorney representing plaintiffs in suits against Alyeska and Exxon relating to the oil spill and who was in Hamel's home at some time during the Wackenhut surveillance. The third Kenneth Adams, whose social security number appears on the credit report, lives in Oregon and appears to have no relation to Hamel, Alyeska, Exxon or the Committee. The Committee has assumed that his credit report was obtained in error and that Wackenhut intended to target one of the other two Kenneth Adams.

[177] Only the credit reports for Scott and Lawn were produced to the Committee in response to its subpoena.

[178] The March 1992 edition of Harper's Magazine contains a copy of a sales brochure distributed in 1990 by Nationwide Electronic Tracking (NET), "an information-brokering company located in Tampa, Florida." NET was identified by the FBI in December 1991 as "the center of a nationwide organization that illegally obtained and sold information, stored in government computers, about private individuals" including financial reports, criminal, motor vehicle and employment records. [A reprint of the brochure published by Harper's Magazine is attached as Exhibit 188. See also several news articles from December 1991, describing the illegal network, attached as Exhibit 189.] The Committee has no information indicating that either Black or Lund obtained financial reports or other data from NET. However, the above-referenced articles illustrate the breadth of this illegal business and the ease with which private investigators may obtain personal and confidential information about individuals.

access to all sorts of juicy tidbits of gossip on nearly everyone in the country. Some of it is even true.

* * * * *

Most credit agencies get their input from banks, stores, doctors, etc. If you are granted credit anywhere, the member organization is supposed to report it to the agency. Your payment record along with your application for the loan is forwarded to the agency and added to your file. Needless to say, information one can garner from a credit agency is considerable, and will include, employment history, net worth, debts outstanding, address, SS number, payment habits, lawsuits, judgements, who the subject has purchased items from, where they bank, size of bank account(s), up to, and including if some neighbor who dislikes the target feels he is prone to drinking while beating his wife. . . . .

You should join a credit bureau BUT NOT AS AN INVESTIGATOR. Many agencies consider PI's or other snoops to be the competition and discourage their patronage. . . . Form a phony shop and join under that, OR make friends with a small business owner nearby and offer him a fee of $5.00 for every credit search he puts through for you. . . .

[Appendix to hearing record, p. 416.]

The Fair Credit Reporting Act ("FCRA") limits the distribution of consumer credit information as follows:

A consumer reporting agency may furnish a consumer report under the following circumstances *and no other:*

(1) In response to the order of a court having jurisdiction to issue such an order.

(2) In accordance with the written instructions of the consumer to whom it relates.

(3) To a person which it has reason to believe—

(A) intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer; or

(B) intends to use the information for employment purposes; or

(C) intends to use the information in connection with the underwriting of insurance involving the consumer; or

(D) intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

(E) otherwise has a legitimate business need for the information in connection with a business transaction involving the consumer.

[P.L. 91-508, 84 Stat 1114, Title VI, section 604.]

Wackenhut had no valid purpose for obtaining credit reports on Scott,[179] Lawn, Swift, Adams or Hamel. Black and/or Lund falsely represented to Mercantile Credit that those credit reports were to be used for pre-employment screening on behalf of Winn Dixie, presumably a Wackenhut client. [Exhibit 164.] Believing Wackenhut to be a reputable business, Ronald Liebofsky, Vice President of Mercantile Credit, obtained the credit reports and provided them to the Wackenhut agents. [Exhibit 164.] By obtaining the credit reports under false pretenses, the Wackenhut agents violated FCRA, section 619, which provides:

> Any person who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses shall be fined not more than $5,000 or imprisoned not more than one year, or both.

Richey testified that from his review of Lawn's credit report, he inferred that Black and Lund had requested only public information about Lawn in the form of a DTEC report providing his address and phone number, but the credit bureau accidentally provided a full credit report. [Hearing record, p. 162.] However, not only is Richey's testimony totally unsupported, but both Mercantile Credit and Equifax, the credit reporting agency which furnished the reports to Mercantile, stated they were asked for full credit histories and not just DTECs. [Exhibits 164, 187.][180]

In addition, Mercantile's billing records indicate that Wackenhut paid for both a DTEC and a full credit history. [Exhibit 164.] Liebofsky explained that often a DTEC is first obtained to ascertain that the right person has been identified in the computer records. Once the identity is established, a full credit history is obtained. [Exhibit 164.]

Tape Recording

Black and Lund recorded many conversations with Hamel. Some were videotaped meetings which occurred in Virginia at the Crystal City office or at Black's hotel. Several were audiotaped meetings at Hamel's home or in restaurants, also in Virginia. Others were audiotaped telephone conversations recorded in Virginia and in Florida.[181]

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[179] Although Scott was an Alyeska employee, the credit report was not obtained for the purpose of his employment.

[180] Although Wackenhut claimed in November 1991 that it had begun an independent review of its conduct during the covert operation, it is clear that no one representing Wackenhut contacted Mercantile Credit to determine the circumstances surrounding the illegal credit reports until June 12, 1992—only after Liebofsky called Wackenhut to complain that Mercantile had been falsely accused of providing unrequested credit reports. [Exhibit 164.] The value of the Wackenhut "independent" committee's January 1992 final report is, thus, highly suspect and its credibility severely undermined.

[181] It is unclear why Black initially lied to the Paul, Hastings attorneys regarding his call to Hamel which he recorded from National Airport. He may have been uncertain in which state the airport is located and, therefore, may not have known whether he could legally record the conversation. In fact, National Airport is on federal land in the State of Virginia. It is operated by the Metropolitan Washington Airports Authority under a lease from the federal government. The Authority is itself jointly operated by the State of Virginia and the District of Columbia. Under the Assimilated Crimes Act, all crimes committed on federal lands are prosecuted in federal courts applying the law of the state in which the federal land is located. Therefore, in this instance, the question of whether Black's recording from National Airport was legal, would be determined by Virginia law.

There is little doubt that Virginia law permits a person to record oral or telephone communications with the consent of only one party to the communication. [Code of Virginia, section 19.2-62.] Therefore, since Black was a party to each conversation he had with Hamel, he had the requisite consent to record.[182]

Although federal law permits a law enforcement officer or other person acting "under color of law" to record oral and telephone communications with the consent of only one party, a person such as Black or Lund, not acting "under color of law," would have no legal right to record without consent of all parties if the "communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any State." [18 U.S.C. 2511 (1), (2)(d).] Thus, to the extent that the undercover operation violated Hamel's civil rights or any criminal law, e.g., obstruction of a congressional investigation, the recording itself may have been illegal.

In addition, Florida law requires the consent of all parties before any conversation may be lawfully recorded. [Florida Stat. Ann. section 934.03 (1), (2)(d).] Therefore, the conversations recorded from Black's Florida office without Hamel's consent were recorded illegally under Florida law and arguably also under federal law, since the purpose of intercepting the telephone communication in Florida was to record it in violation of Florida law.

Richey testified that in his opinion Black's recording in Florida was legal because Hamel was in Virginia at the time. [Hearing record, pp. 131-132.] According to Richey, because Virginia permits recording without Hamel's consent, Hamel, a Virginia resident, thus had no expectation of privacy. Richey's argument is patently absurd. Under Richey's analysis, since federal law requires only one party's consent, all state laws which require the consent of both parties would be rendered ineffective because citizens of all states would be deemed to have no expectation of privacy during conversations held while in the U.S.

Furthermore, Hamel knew Black was calling from Florida, a state which does not permit recording without consent.[183] Therefore, Hamel had every reason to expect that Black would seek his consent before recording any call in Florida.

Even assuming for argument's sake that the recording of meetings and conversations with Hamel was lawful, federal law prohibits the possession or interstate transportation of a device whose design "renders it primarily useful for the purpose of the surreptitious interception of wire, oral, or electronic communications." [18 U.S.C. 2512.] The statute specifically refers to surreptitious, not illegal, interceptions. Therefore, the mere possession or interstate transportation of the equipment is illegal—whether or not it is used to record illegally.

> The provisions of [section 2512] are applicable to devices whose design renders them primarily useful for the surrep-

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[182] During at least one videotaped meeting, Black left the room while Hamel made a telephone call to a third party. Hamel's side of the conversation was recorded. It is not clear whether taping of such conversations is legal in Virginia.

[183] Every citizen is deemed to know the law and cannot use ignorance of the law as either sword or shield.

titious interception of private wire or oral communications. The statutory phrase is intended to establish a relatively narrow category of devices whose principal use is likely to be for wiretapping or eavesdropping. A device will not escape the prohibition merely because it may have innocent uses. The crucial test is whether the design of the device renders it primarily useful for the surreptitious listening. . . .

The prohibition will thus be applicable to, among others, such objectionable devices as the martini olive transmitter, the spike mike, the infinity transmitter, and the microphone disguised as a wristwatch, picture frame, cuff link, tie clip, fountain pen, stapler, or cigarette pack, and are readily available on the market. By banning these devices, a significant source of equipment highly useful for illegal electronic surveillance will be eliminated.

. . . To be prohibited, the device would also have to possess attributes that give predominance to the surreptitious character of its use, such as the spike in the case of the spike mike or the disguised shape in the case of the martini olive transmitter and the other devices mentioned in the preceding paragraph.

[S. Rep. No. 1097, 90th Cong., 2d Sess. 93-95 (1968).]

Caputi informed the Committee that the equipment she brought to Virginia in the RV included listening devices made to look like ceiling sprinklers.[184] [Appendix to hearing transcript, p. 333.] Possession of such devices, which are clearly disguised to facilitate surreptitious use, would likely be considered illegal under federal law. Virginia law also prohibits the possession of such devices. [Code of Virginia, section 19.2-63.]

The possession of illegal devices could explain why Black had the equipment driven to Virginia in the RV instead of transporting it by plane where it could be scrutinized by airport security. The presence of illegal devices could also explain Black's curious August 10, 1990 letter to Cruz, which he told her to present to any law enforcement official who might stop the RV on the drive to Virginia. Black made false statements in the letter about the covert operation in an apparent attempt to paint it as one properly conducted in close cooperation with federal, state and local law enforcement authorities. [Exhibit 77.] Black may have believed a police officer would be less inclined to question the transportation of the devices if he believed they were being used in an operation sanctioned by lawful authority.

Obtaining MITI software

After Black and Lund persuaded Hamel and Ewell to provide Ecolit with the free use of MITI's Readware, Black, as "Jenkins," wrote Ewell to confirm the free use and transmitted the letter by telefax. [Appendix to hearing record, p. 499.] MITI mailed the soft-

[184] Although Caputi believed they were cameras, it is clear that Lund installed audio equipment in the ceiling of the Crystal City office. [Exhibit 190.]

ware to Ecolit along with a bill for $6,000,[185] but agreed to defer payment until Ecolit won its first environmental lawsuit.

In fact, no such lawsuit was contemplated and Black and Lund both knew that Ecolit would never pay for the software. Black and Lund not only used the software during the undercover operation, but kept it afterwards, brought it back to Miami, and returned it on December 26, 1990, only after attorneys from Paul, Hastings discovered that they had obtained it under false pretenses.

Federal law prohibits the use of the U.S. Mail or any interstate wire communication in furtherance of a scheme to obtain money or property by false or fraudulent pretenses. [See, 18 U.S.C. 1341, 1343.] Federal law also prohibits a person from transporting in interstate commerce any fraudulently obtained goods valued in excess of $5,000. [See, 18 U.S.C. 2314.] Thus, it appears that Black and Lund may have violated federal law. [Appendix to hearing record, pp. 546–564.]

At the hearing, Richey testified that Black and Lund believed the MITI computer contained data from the "stolen" Alyeska documents in Hamel's possession and was being used by Hamel to transmit the data from the MITI office in Washington, D.C. to Hamel's Virginia home. [Hearing record, pp. 191–192.] Therefore, because they only intended to obtain the "stolen" information contained in the MITI database, and not the software itself, according to Richey, Black and Lund did not have the requisite intent to defraud MITI. [Hearing record, p. 192; see also, Exhibit 180, tab F, for a similar argument by Alyeska's attorneys.]

However, the evidence does not support Richey's and Alyeska's version of the facts. Although they initially believed that Hamel stored data from the Alyeska documents on the MITI software, Black and Lund apparently learned on May 16, 1990, the day before their false representation to MITI, that their belief was erroneous. [Appendix to hearing record, p. 547.] Furthermore, even if they had initially intended to use the software to obtain evidence of a crime, the facts show clearly that Lund, Black and Johnson actually used it to input data from the documents Hamel gave them. That is precisely the purpose for which the software was intended. Thus, they derived a valuable business benefit from its use.

In addition, when the Owners closed down the covert operation in September 1990, Black also closed down Ecolit. Yet he made no attempt to return the software to MITI until December 26, 1990, after Paul, Hastings discovered the fraud and advised Black to return the software immediately.[186] These facts are inconsistent with Richey's testimony that Black and Lund only intended to gain access to "stolen" data.

Moreover, the use to which Black and Lund intended to put the software and their motivation for obtaining it are irrelevant. The relevant fact is that they intended to and did use a wire communication to obtain by false pretenses, property valued at over $5,000. They lied to Hamel and Ewell when they told them they would pay them after their first win. They lied when they told Hamel they

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[185] The invoice was not provided to the Committee.

[186] Even then, Black did not return the software until after speaking to Wellington. He lied to Paul, Hastings and told them he returned it weeks before he actually did.

would use the software to prepare for environmental lawsuits against the oil industry. They knew that if Hamel and Ewell had known the truth, they would not have provided Black and Lund with free use of the MITI software. It is difficult to imagine any clearer evidence of intent to defraud.

Document "Recovery"

Black was in Hamel's home twice during May 1990. While there, he took documents which he claimed belonged to Alyeska and which he, as agent for Alyeska, claimed a right to "recover" for his client.

Alyeska produced four documents to the Committee which had been "recovered" by Black. One is a newsletter, On Top of ANWR, published and distributed by ARCO Alaska, Inc. [Exhibit 56.] Hamel received the newsletter from Scott in an envelope addressed to Gloria Ewell at MITI. Black wrote on the envelope that he "recovered" the document from Hamel's "residence" on May 9, 1990.[187]

It was suggested at the hearing that Black may have taken the document from Hamel's trash. [Hearing record, p. 37.] The evidence does not support this theory. Jacobson, who was present during Black's entire visit to Washington, D.C. and Virginia that day, never mentioned seeing Black take documents from Hamel's trash or his wastebasket. Although Black refused to testify at the hearing, his handwritten notation on the document states only that he obtained it from Hamel's "residence." In other instances, when documents were taken from Hamel's trash, the documents are plainly described as such.[188]

Secondly, it appears that the envelope containing the newsletter was unopened when Black took it.[189] It is not likely that Hamel intended to discard an unopened envelope he received from Scott. Black apparently recognized the post office box number in the return address as Scott's address and assumed the envelope would contain information about Alyeska. Had the envelope been opened, it is difficult to understand why Black would have taken the newsletter. It is clearly not an Alyeska document and contained no information which could be described as confidential or proprietary.

Even if Black had taken the document from a wastebasket in Hamel's home, Black could not reasonably have believed he had a right to take any document which so plainly did not belong to Alyeska. Moreover, while still inside his home, papers in Hamel's

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[187] Jacobson testified that on the plane to Miami on the evening of May 9, 1990, she saw two other documents in Black's possession, which he told her he had taken from Hamel. The Committee was not provided with those documents.

[188] Alyeska and Wackenhut have not produced a memorandum from Black to Wellington regarding Black's contact with Hamel on May 9, 1990. It would be uncharacteristic of Black not to have reported to Wellington in writing about such a significant contact. The Committee believes a memorandum regarding Black's activities at Hamel's home would contain a description of how he obtained the newsletter and other documents taken from Hamel's home that day.

[189] The opinions of Alyeska's attorneys appear to be in conflict regarding the legality of taking Hamel's unopened mail. In a post-hearing submission to the Committee, Jordan took the position that if Black thought the envelope contained Alyeska documents, then he intended only to take the Alyeska documents and could not have formed the requisite criminal intent to take documents not belonging to Alyeska. However, at the hearing, Richey, a former prosecutor, testified that Black took unopened mail at his "own risk." [Hearing record, p. 135.]

wastebasket had not been "abandoned" such that Hamel relinquished his control over and right to possess the papers.

The other three documents Black has admitted taking from Hamel, Black "recovered" on May 16, 1990 while in Hamel's home with Lund. [Exhibit 57.] One is a copy of an Alyeska work request form regarding action taken on a safety complaint. The second is a copy of an Alyeska administrative memorandum regarding a systems failure. The third is actually a copy of two documents, one regarding the issuance of an Alyeska security pass and the other a memo from Alyeska's Public Affairs Department. While all the documents contain information about Alyeska, they are xerox copies, not original documents from Alyeska's files. None are marked confidential or privileged.

At the hearing, an analogy was made between Black's right to "recover" Alyeska documents found in Hamel's home and the right of a bicycle owner, or someone on his behalf, to recover the owner's bicycle from a suspected thief's garage. [Hearing record, p. 28.] This analogy works only if the bicycle is, in fact, the owner's bicycle, and not just an identical copy. Even if the design of the owner's bicycle had been patented and was, therefore, an asset or a trade secret, the owner would not have the right to take as his own, a copy made from his original design. The law provides him a remedy in the form of money damages for the infringement of his copyright. Likewise, Alyeska had a remedy against Hamel if it truly believed Hamel had illegally obtained Alyeska's assets and trade secrets. In fact, Alyeska was fully aware of its rights, and hired lawyers to file suit against Hamel for return of the documents in his possession. However, the Owners' attorneys did not believe the case Alyeska had developed against Hamel was strong enough to warrant filing suit and refused to authorize it. [Appendix to hearing record, p. 612.]

It was also suggested at the hearing that Black was only attempting to collect evidence against Hamel for use in an anticipated suit against him. Even assuming that to be the case, Black still did not have a right to collect evidence of "stolen" documents by, in turn, stealing documents from Hamel. Even if Black mistakenly believed the law permitted him to "recover" copies of Alyeska documents from Hamel, he is nonetheless responsible for the consequences of his own intended acts. His ignorance of the law cannot be used as a shield to protect him when it turns out that his intentional acts were unlawful.

Furthermore, there is simply no evidence that these copies of documents belonged to Alyeska.[190] Nor does it appear that Black inquired before or at the time he took them whether they legally belonged to Alyeska. Since the documents were not marked as confidential or proprietary, Black could not reasonably have concluded even that the information contained in the copies had been "stolen" from Alyeska. Absent a good faith belief that the docu-

[190] In a post-hearing defense brief submitted to the Committee, Alyeska's attorneys opined that Black accurately believed the documents belonged to Alyeska. [Exhibit 180.] The brief offers no explanation of why Black's belief is accurate and offers no evidence to support the reasonableness of his belief.

ments belonged to Alyeska, Black's "recovery" of these documents cannot be excused.

ALYESKA'S ROLE

Although it appears that Wackenhut agents actually conducted all, or at least a majority,[191] of the surveillance activities against Hamel and others, responsibility for that conduct is not limited to Wackenhut and its agents. The fact remains that Alyeska hired Wackenhut. Black was in immediate contact with Wellington by telephone, telefax and Federal Express overnight delivery regarding virtually every aspect of the surveillance activities. In addition to their meetings in Miami and Anchorage in March 1990, Black, Lund, Wellington and Iverson met three times during the seven-month covert operation to discuss its progress and plan its continuation. Furthermore, Wellington communicated the progress of the operation to Hermiller on a regular basis. [Hearing record, p. 167.] Despite full knowledge that the Wackenhut agents were obtaining telephone toll records, credit reports and other private records and information and that they included the charges for this information on their monthly bills to Alyeska, Alyeska did nothing to stop or even question those activities. [Exhibit 3, pp. 435, 452–453, 457–460.]

It is disturbing to note that Alyeska's covert operation against Hamel appears to be part of a pattern. Alyeska has, on at least one prior occasion, used the subterfuge of "stolen" documents and secret records in an attempt to discredit critics. In 1985, Alyeska became concerned that a former employee, James Woodle, had shipped "stolen" Alyeska documents from Valdez to the State of Washington as part of his personal belongings. Dan Lawn, the ADEC official with oversight responsibility for Alyeska, was suspected of receiving documents through his friendship with Woodle. After an investigation, the Alaska State Troopers closed the case on May 20, 1985 concluding that they were "unable to find evidence to support theft charges." [Exhibit 200.]

Not satisfied with the State Trooper findings, Alyeska hired Robert V. Walker, a private investigator in Washington, to investigate Woodle and his connection with Lawn. In a July 13, 1985 handwritten letter to Wellington, Walker described how he threatened Dan Lawn's wife with criminal liability for being in receipt of documents "stolen" from Alyeska:

> You should be aware that my final shot threatened her and her husband with being receivers of stolen property as we felt some of the contents of those 33 boxes were property that Woodle had stolen from Alyeska. I feel this is a good subterfuge which, if layed on Mr. Lawn, may prompt him to tell you what was really in those boxes so as to clear himself of any criminal conspiracy.

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[191] The documents reveal several instances in which Wellington was asked to become directly involved in investigative activities undertaken in Alaska. For example, Black asked Wellington to obtain the record of Hamel's March 1990 stay at the Voyager Inn in Anchorage, including the telephone calls made from his room. No documents produced to the Committee indicate whether Wellington sought or obtained that information. Wellington has stated that he did not obtain those records. [Exhibit 3, pp. 444–445.]

[Exhibit 200.]

On January 24, 1986, Lawn met with Wellington to inquire why Alyeska was pursuing an investigation after the State Troopers considered the case closed. Without Lawn's knowledge or consent, Wellington recorded the conversation with Lawn. In response to Lawn's concerns about the investigator's tactics, Wellington said Alyeska could not be held accountable.

> We did hire an individual in Seattle. A private investigator who the company had used before on certain occasions to weed out some information that we had received. *And how he conducts himself in the course of his business inquiries is his problem not ours.* We're paying him to perform a function just like you would pay somebody to come in and paint your building.

[Exhibit 200, emphasis added.]

Whether Alyeska is directly or indirectly liable for any wrongful acts which may have been committed by the Wackenhut agents, is a matter for a court to decide. However, in the broader sense, Alyeska bears great responsibility for having loosed Wackenhut on its critics, on its employees and on public and private citizens who crossed its path. There are appropriate ways for responsible corporate citizens to deal with information leaks, negative publicity and unwanted government regulation and oversight. The Committee expects that Alyeska and its Owners will make every effort to ensure that only appropriate responses to such corporate concerns are undertaken in the future.

OBSTRUCTION OF JUSTICE

Interfering with a Committee Witness

During the course of its ongoing oversight of Alyeska's activities, the Committee has received relevant information from numerous sources, including occasionally from Hamel. Hamel's contacts with and role in providing various government agencies, congressional committees and the press with information regarding Alyeska's operations have been well known for years.

In fact, Alyeska considered Hamel to be the "principal recipient" of damaging information leaked from its employees over the years and kept files on Hamel's activities including his communications with federal government officials. They were well aware of who Hamel's federal government contacts were. [Exhibit 191, pp. 6–7; appendix to hearing record, pp. 674, 675, 690–706, 712.]

In the aftermath of the *Exxon Valdez* disaster, Alyeska became increasingly concerned about the leaks of damaging information which had already severely eroded Alyeska's public image and posed an even greater threat of continual lawsuits, EPA and ADEC enforcement actions and congressional investigations.

> Alyeska is a named defendant in over 180 pending suits stemming from the *Exxon Valdez* spill. The high profile of TAPS/Alyeska and the increasing "politicizing" of ecological/environmental matters has caused them to be among the most heavily investigated companies in the United

> States. Alyeska, the Owners Committee and the TAPS owners feel that TAPS/Alyeska has a delicate public image that could be damaged seriously by further leaks or unfavorable publicity. Alyeska has been the subject of numerous and damaging leaks of confidential information. As an example . . . the *Scottish Eye,* an English television show, contrasted British Petroleum's participation in TAPS/Alyeska with BP's North Sea operations, showing TAPS/Alyeska in a very poor light. The story made public portions of confidential memoranda prepared by outside legal counsel to Alyeska, but no one knows how the memoranda came into their possession . . . These factors have combined to create paranoia among the employees and a "siege mentality" of the enterprise as a whole.

[Appendix to hearing record, p. 713.]

In that atmosphere of siege and paranoia, Alyeska determined that the flow of damaging information from Alyeska's employees to Hamel and his "Alyeska mafia" had to be cut off. When Alyeska hired Wackenhut to conduct the undercover search for Hamel's sources, it planned to terminate those employees and seek prosecution of Hamel and others, thereby ending the leaks and the negative publicity.

Alyeska claims that this course of action was intended only to find out which of its employees was stealing documents. However, as the "sting" perpetrated on the citizens of Valdez made clear, Alyeska did not limit its search to Alyeska employees. It sought to identify anyone who was willing to pass along negative information regarding Alyeska's or its Owners' handling of environmental matters.[192]

Alyeska claims its covert operation was not intended to interfere with the proper receipt by this Committee or any government authority of information from Hamel about Alyeska's alleged environmental contamination and safety violations.[193] As Hermiller testified:

> No way were we interested where Mr. Hamel was taking those documents—I shouldn't say that. We were interested, but . . . if those documents . . . in any way were being passed on to this committee or impinging on this committee, I wouldn't touch that with a 10-foot pole.

* * * * *

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[192] Black's canceled meeting with Hamel on September 26, 1990 was scheduled with the intention of eliciting the details of Hamel's plan to expose dumping of hazardous waste by Exxon and BP. [Exhibit 88.] Hamel's plan involved journalists and an undercover investigator—not Alyeska employees.

[193] Alyeska was also apparently interested in its employees' leaks of information directly to state government officials. Wellington provided Lund with a list of all phone calls made from Alyeska phones. Lund searched those records for instances in which Alyeska employees called the Alaska Department of Energy Conservation, the State Fire Marshall, State of Alaska Pollution Control, Valdez City Hall, and the Valdez Police and Fire Departments. [Exhibit 192.]

In addition, Lund's analysis of Hamel's telephone toll records established that Hamel and Scott were speaking to state official, Dan Lawn. At the Scott hearing, Wellington testified that despite knowledge of Scott's and Hamel's relationship to Lawn, he was not concerned that the covert operation was interfering with regulators' sources of information. [Exhibit 3, p. 512.]

> It was a concern of mine, obviously, that Mr. Hamel had these documents, but it was not so much what he was doing with them. We were trying to work our way back to where those documents were getting out of Alyeska. That was the objective of this thing.

[Hearing record, pp. 138, 201-202.]

However, the record reveals that Alyeska was very interested in what Hamel was doing with the documents. In fact, Alyeska admittedly acted upon Black's report to Wellington that Hamel was "feeding" Congressman Miller "stolen" documents which would be used to "set up" Hermiller at hearings being conducted at that time by Miller's subcommittee. [Exhibit 57.]

Alyeska hired lawyers to advise it whether and how to extend the covert surveillance to Congressman Miller. Far from the "10-foot pole" that Hermiller suggested was between Alyeska and the Committee, Alyeska's attorneys and investigators considered ways to obtain information to use against Congressman Miller in an attempt to halt the flow of negative information about Alyeska to the Committee and prevent the Committee from using so-called "stolen" documents and information to disclose facts which would further damage Alyeska's public image. [Appendix to hearing record, p. 467, 475; Exhibit 71.]

Their plans included drawing Congressman Miller into the "sting." Black planned to meet with Congressman Miller in a Virginia hotel where Lund could secretly record their conversation. [Appendix to hearing record, p. 469; executive session transcript, pp. 124-125.] Richey advised that recording was essential because the congressman's "actual words must be available" to be used against him. [Appendix to hearing record, p. 457.]

Although both Alyeska and Wackenhut testified that Congressman Miller's name did not come up in the investigation until Hamel mentioned it on May 16, 1990, it is clear that from the first communication between Wellington and Black, Congressman Miller had been targeted. Among the articles Wellington sent to Black in February 1990 was one regarding a "leaked" Exxon memorandum and Congressman Miller's call for hearings regarding the contents of that memorandum. [Exhibit 7; appendix to hearing record, p. 449.] The Wackenhut agents used such preliminary information to create a diagram containing the names of those known to have received information from Hamel. Congressman Miller is prominently featured on the diagram.[194] [Appendix

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[194] When questioned by Scott's attorney at the 1992 DOL hearing, Wellington denied that when the covert operation first began, he "gave any thought" to Congressman Miller having received information from Alyeska employees. [Exhibit 3, p. 386.] In fact, Wellington denied even knowing who Congressman Miller was in relationship to Alyeska.

Q. Congressman Miller is who in relationship to Alyeska? We probably should establish that.

A. Oh, in relationship to Alyeska? Well, he's a Congressman of the United States Congress.

Q. What is his role in the context of oversight of Alyeska's operations?

A. Whatever he thinks it is, I guess.

Q. That's not what I asked you, Mr. Wellington.

A. Oh.

Q. What is his official responsibilities in his duties as a United States Congressman in regards to Alyeska?

Continued

to hearing record, p. 449.] Other Wackenhut diagrams depict information obtained from Hamel during Black's, Jacobson's and Lund's conversations with him in March, April and May 1990 and feature Congressman Miller even more prominently, apparently reflecting the extent of Hamel's claimed association with him. [Appendix to hearing record, p. 450.]

In fact, one Wackenhut diagram charts the perceived flow of information from Alyeska through Hamel to Congressman Miller and the Committee. [Appendix to hearing record, p. 451.] It is clear from the diagram that Alyeska's concern in this instance was not that its information might have been going to pipeline terrorists and industrial saboteurs as Wellington suggested at the hearing, but that information was going to the Committee.

The record provides additional evidence that Congressman Miller was named in the investigation long before Hamel mentioned him on May 16, 1990. Jacobson informed Black on March 26, 1990 that Hamel claimed a relationship to Congressman Miller. [Exhibit 33.] By April 25, 1990, Black knew that Hamel also claimed a relationship with Committee counsel, Jeff Petrich. [Exhibit 40.] Lund's April 25, 1990 memo to Wellington discusses Roy Dalthorp who is said to have done work for "George Miller and an individual in Virginia." [Exhibit 193.] Jacobson called Congressman Miller's office on April 26, 1990 to obtain his hearing schedule and then sent it to Wellington. [Exhibits 46, 47.] Black's memorandum to Wellington regarding his May 16 meeting with Hamel stated that he "reminded" Black that Miller had stayed at Hamel's home during the *Exxon Valdez* hearing. Black's June 5 memo also stated that he had previously discussed Miller with Hamel. [Exhibit 60, 64.] Thus, from Black's and Lund's statements alone it is clear that Congressman Miller's name had come up much earlier than May 16, 1990.

In addition, Goodman's notes of his May 16 conversation with Black contradict the testimony. According to Goodman, Black told him: "Our investigation has reached the stage where we need to pursue allegations against Congressman." [Appendix to hearing record, p. 475.] Those notes strongly suggest that there was, in fact, an earlier stage in the investigation during which Black developed the information about Congressman Miller which confirmed Alyeska's initial decision to target him in the "sting."

The testimony of Wackenhut investigators Contreras and Cruz is also consistent with the documentary evidence that Congressman Miller was a target. Both testified that they had been told that the

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A. I have no idea.

Q. Isn't it true that he's a Congressman in charge of the oversight committee in the Committee of Interior and Insular Affairs that's responsible for oversight of Alyeska's operations?

A. Sounds like a pretty fancy title. I guess it could very well be.

Q. You have no idea what Congressman Miller's responsibilities are?

A. He's a Congressman from California, and he's on an Interior committee, and he holds hearings and is hanging around. I don't know.

[Exhibit 3, p. 514.]

However, when questioned by Alyeska's attorney the following day, Wellington explained why he reacted strongly when Congressman Miller's name came up in the investigation:

I just have a . . . deep respect for Congress, how they operate, what they do, what they're charged with, what their responsibilities are, their authority. . . .

[Exhibit 3, p. 602.]

object of the investigation was to "identify those persons with whom Mr. Hamel was communicating, including Congressmen and their staffs [and] other Federal and State officials. . . ." [Appendix to hearing record, p. 326; see also, pp. 282–283.]

Black not only followed Richey's advice by attempting to confirm that Hamel was communicating with Congressman Miller, but he also attempted to obtain the information Hamel was providing to the Committee. For example, Hamel told Black in August 1990 that he had documents which referred to "secret meetings" prior to the *Exxon Valdez* oil spill regarding Alyeska's and its Owners' inability to handle an oil spill. Hamel stated, "[n]ow Miller has gone out and done something with that," suggesting that he had provided Congressman Miller with information about those "secret meetings." Black immediately asked Hamel for those documents: "those are the kind of memos, those internal memos that you get out from under them, that we should put in there." [Exhibit 85.] The documents were not about trade secrets; nor is there any indication that they were "privileged" attorney-client communications. They were documents containing damaging information relevant to the Committee's ongoing investigation of the *Exxon Valdez* disaster.

Thus, it seems clear that from the beginning of the covert operation, one of Alyeska's principle objectives was to stop the flow of information to the Committee. That objective was formulated and executed in the midst of the Committee's investigations of the *Exxon Valdez* oil spill and TAPS operations and at a time when the Committee was actively pursuing legislation (TAPS Reform Act, Title VIII of H.R. 1465) directly affecting Alyeska's interests.

The Committee has no evidence that Alyeska actually conducted covert surveillance of or recorded Congressman Miller or any other member of Congress. There is no doubt, however, that they seriously considered doing so. Based upon counsel's advice regarding the pitfalls of a private "sting" on a U.S. Congressman, Alyeska may have at least temporarily rejected the idea.

As Richey advised Alyeska, the best alternative to Alyeska's conducting a private sting, would be for Alyeska to present information about an alleged "theft" of documents to Wackenhut's contacts at the FBI, who could then authorize Black and Lund to work as part of an official FBI undercover investigation. [Appendix to hearing record, p. 454.] It appears that Wackenhut and Alyeska opted to defer extending the "sting" operation to Congressman Miller until they had what they believed would be enough information to present to the FBI.[195] [Appendix to hearing record, p. 448.] That they never got that far before the Owners stopped the operation does not diminish the seriousness of their attempt.

Alyeska's case that Hamel was providing "stolen" documents to members of Congress, in particular Congressman Miller, required proof that (1) Hamel "stole" the documents, arranged to have them "stolen" by Alyeska employees or received the documents knowing them to be "stolen"; and (2) Hamel acted as a Congressman's

[195] This strategy was confirmed at the hearing by George Wackenhut, who testified that they discussed investigating Congressman Miller "only in the event that it appeared that the allegations by Mr. Hamel had some weight, and that is why the attorney was contacted. And his response was, no, there is insufficient evidence here; and if the evidence were any greater, we would turn it over to the Federal authorities." [Hearing record, p. 36.]

"agent." Black reported to Wellington and Richey that from the beginning, Hamel admitted to him that the documents were "stolen." Richey claims to have heard such an admission by Hamel in one of the videotaped conversations. However, as discussed above, not one of the tapes or transcripts contain even a suggestion by Hamel that he believed the documents to have been "stolen." Nor is there any reference in any tape or transcript that Congressman Miller or any other member of Congress even knew the documents existed, much less that they solicited Hamel to steal them.

Black admitted in May 1990 that there was no evidence of any Committee role in soliciting the theft of documents. [Appendix to hearing record, p. 447.] In June 1990, Hamel specifically told Black that Congressman Miller did not even know about the documents. [Exhibit 65.] In August, he told Black that although Petrich, the attorney general of Alaska and the Justice Department knew about the documents, he did not give them to any of them. [Exhibit 78.] He explained to Black that after Alyeska sued the EPA in an attempt to obtain copies of documents Hamel had provided the EPA, he stopped providing the government with documents for fear that if Alyeska were able to obtain them, his sources would be discovered and terminated. [Exhibit 65.]

Thus, in his first recorded conversation with Hamel in June 1990, Hamel gave Black information which should have informed him that Hamel was not Congressman Miller's agent and had not been asked to steal Alyeska's documents by Miller, any other congressman or by anyone on the Committee staff. In subsequent conversations, Hamel informed Black that even Hamel did not solicit documents. He told Black they were provided to him, unsolicited, directly or indirectly by Alyeska employees and sometimes by completely anonymous sources. [Exhibits 78, 84, 85, 175.]

Moreover, although Black told Wellington that Hamel had been "feeding" documents to Congressman Miller that he would use at upcoming hearings to "set up" Hermiller, it is clear that no "stolen" documents were ever used at those or any other hearings to "set up" Hermiller or anyone else. Alyeska should have known then that the reliability of the information it was receiving from Black was highly suspect.

Perhaps recognizing that he had no evidence linking Congressman Miller or Petrich to the documents, Black continued to solicit and report information to Alyeska about Miller and Petrich which could only be useful to Alyeska to the extent it might be used to discredit Congressman Miller and attempt to stop the Committee from investigating Alyeska's operations aggressively.[196] As discussed earlier, much of what Black reported was based upon what can at best be described as a mischaracterization of Hamel's statements. Yet it was the subject of much discussion at Black's meetings with Alyeska and remained on Alyeska's agenda through its September 25, 1990 meeting with the Owners, where it was highlighted in a screening of excerpts from the videotapes of Hamel's

[196] For example, Black probed Hamel for personal information on the Committee counsel: "What kind of guy is Petrich?" [Exhibit 85.]

conversations with Black and "hyped" as "bad stuff on Miller." [197] [Exhibit 92; appendix to hearing record, p. 610, 617.] While the Owners ultimately decided not to use the information, Alyeska had plainly considered it "fair game" at least until the Owners called an abrupt halt to the undercover operation.

This long-term interest in Congressman Miller and Committee staff is not consistent with Wellington's testimony that he flew to San Francisco on May 23, 1990 to tell Black "that we are not investigating anybody from Congress or any other staff people." [Hearing record, p. 195.] It is, however, completely consistent with Black's May 23, 1990 statement that although no surveillance of Congressman Miller need be undertaken at that time,

> [s]urely, future contact with Hamel will result in additional, more clarifying information about Congressman Miller. If and when Hamel even hints that he (Hamel) is assisting or acting as an agent of Miller, we will cease our undercover approach.

[Appendix to hearing record, p. 448.]

Alyeska and Wackenhut witnesses testified that "cease our undercover approach" meant they would immediately stop all investigative activities and disclose the undercover operation to Congressman Miller in the event they discovered that Hamel was working for him. [Hearing record, pp. 52, 154, 157; Exhibit 3, p. 511.] However, read together with Richey's advice to present information on Miller to the FBI, a more reasonable and less self-serving interpretation of Black's words reveals his intention to cease the private undercover approach in favor of an approach under the auspices of the FBI.

In addition to his search for information linking Congressman Miller to "theft" of documents, Black also solicited information from Hamel regarding the subjects and contents of other communications with the Congressman or Committee staff. He was interested in far more than "leaked" Alyeska documents as he repeatedly quizzed Hamel about Miller's knowledge of Hamel's scheme for the Congressman to board an Exxon oil tanker to expose safety problems. [Exhibit 84.] Nor was he interested in "leaks" when he asked Hamel whether information from an Exxon source regarding illegal dumping of tanker wastes off the California coast would be provided to "Miller's people." [Exhibit 65.] As the transcripts reveal, Hamel spoke at great length with the slightest prompting. Black quickly learned that with one question, he could obtain a wealth of information from Hamel, who was eager to pass on his knowledge to one he believed was an environmental activist.[198]

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[197] Based upon interviews of the notes taken by attorneys who viewed the tapes, the Owners were apparently also shown excerpts regarding Hamel's allegations of pollution by Exxon. [Exhibit 92; appendix to hearing record, p. 616.] There is no evidence that the excerpts selected for viewing focused solely on Wackenhut's attempts to identify the sources of leaks. [Exhibit 92; appendix to hearing record, pp. 609-612.]

[198] On November 20, 1991, Alyeska's counsel, Robert Jordan, provided the Committee with excerpts from those videotapes which refer to any member of the Committee or its staff. In the accompanying letter to Chairman Miller, Jordan stated: "When the body of extracted material is examined in its entirety it shows that no efforts were being made by Wackenhut to investigate you, your staff or members of the Committee or Committee staff. Rather, it is clear that

Continued

It is unclear what Alyeska did with all the information it received from Black's videotapes of Hamel. Black's obvious interest in matters concerning Exxon coupled with SID investigators' testimony that they were told the covert operation had been sponsored by Alyeska and Exxon, suggests at the least that Alyeska had targeted such information for solicitation. The Committee has no evidence that Exxon actually received any information obtained from Hamel about his sources until after the covert operation was disclosed to the Owners or that it used any of the information before the covert operation was discovered and became the subject of the Committee's investigation.

It is clear, however, that Alyeska made some immediate use of the information it received from Hamel. At the hearing, Hermiller testified:

> HERMILLER. I learned later on then that—and it came as a result of this investigation—that Mr. Hamel said he was going to get another hearing scheduled, or you would schedule another hearing. At that time you would ask me again about corrosion on the vertical support members, and I would perjure myself, and at that point in time I would be set up, or something.
>
> The CHAIRMAN. But you came across that how? That was a report from Mr. Wellington?
>
> HERMILLER. That was a report from Mr. Wellington.
>
> The CHAIRMAN. What was your response to that?
>
> HERMILLER. My response was to find out immediately whether there was any corrosion on the vertical support members, because I had testified that there wasn't, and that was my best information.

[Hearing record, pp. 167-168.] Plainly, regardless of its initial purpose, for Alyeska the covert operation served as a means of obtaining information about the Committee and its business from Hamel, whom Alyeska perceived to be well connected to the Chairman and Committee staff.[199]

It is disingenuous to state, in light of these facts, that Alyeska had no interest in interfering with both the Committee's receipt of information about Alyeska's activities and its "plans" for inspections and other oversight activities with respect to Alyeska and its Owners. Although in this instance Alyeska may have had a legitimate motive—to prevent its employees from disclosing "privileged" documents to its opponents in litigation—that was not its only motive. If it had been, Alyeska could have obtained protection from the court. It is plain that Alyeska also sought to stop the hemorrhage of negative information from its employees to any source, including the State of Alaska, the EPA and the U.S. Congress.

Mr. Hamel, almost entirely free of prompting, repeatedly referred to claimed relationships with you or your staff." [Exhibit 194.]

However, a review of the excerpts provided by Alyeska illustrates plainly that Black actively solicited information from Hamel regarding the Committee's interest in and use of information Hamel obtained from Alyeska's employees. Moreover, Black's interest was not limited to the use of information contained in allegedly "stolen" documents, but extended to any and all information about Alyeska and its Owners.

[199] In his testimony, Hamel stated that he had "exaggerated" his influence with the Committee during the secretly recorded sessions with Black. [Appendix to hearing record, p. 275.]

The United States Code provides:

> Whoever corruptly . . . influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House. . . .
>
> Shall be fined not more than $5,000 or imprisoned not more than five years, or both.

18 U.S.C. section 1505.

The Committee has little doubt that Alyeska and Wackenhut attempted to impede the Committee's ongoing inquiry into matters regarding Alyeska's operation of the Valdez terminal and the Trans-Alaska pipeline system. In fact, Alyeska was not concerned only with the Committee's access to such information, but also with access by the State of Alaska, EPA and the Justice Department.

Of course, we do not suggest that a citizen "obstructs Congress" by turning over to law enforcement authorities evidence that a congressman has committed a crime. However, Alyeska and Wackenhut had no evidence of a crime.[200] Alyeska hypothesized that a "crime" occurred and then attempted to assemble proof of it despite Hamel's videotaped denial that he had given either Congressman Miller or Committee staff any of the documents in question or that Miller even knew the documents existed. The goal of Alyeska's search was not simply to find leaks from within Alyeska, but to prevent the Committee and other recipients of any information about Alyeska's environmental and safety practices from using it to further embarrass Alyeska.

We also believe that Alyeska's attempt to impede the Committee's investigation was "corrupt." [201] Although "corrupt" does not mean only "illegal," significant illegalities may have occurred in the attempt to impede the Committee's access to information about Alyeska. In any event, the covert operation was designed to acquire a wrongful advantage for Alyeska—the ability to operate its business in secret without fear that any environmental, health and safety violations would be disclosed to government authorities by Alyeska's employees.

It is for these reasons that the Committee believes Alyeska's covert "sting" operation was at least in part an attempt to obstruct a congressional investigation in violation of 18 U.S.C. 1505.

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[200] At the hearing, Rusnack rebuffed the suggestion that the videotapes contained evidence that "Members of this committee, or staff from this committee may have been participating, or encouraging the flow of documents from your company to them." Rusnack stated, "Sir, the tapes were not specific in talking about 'encouragement' or 'participation.' The tapes that I recall were simply that Congressman Miller was a person who was mentioned by Mr. Hamel in one of the segments, as was his staff member, Mr. Petrich." [Hearing record, p. 243.]

[201] Corrupt. Spoiled; tainted; vitiated; depraved; debased; morally degenerate.

Corruptly. When used in a statute, this term, generally imports a wrongful design to acquire some pecuniary or other advantage.

Black's Law Dictionary, Fifth Ed., West Publishing Company, 1979.

Withholding Evidence

It is clear that key documents from Alyeska's and Wackenhut's files of the covert operation were not produced to the Committee during the course of its investigation. For example, all but a few of the detailed bills prepared for Alyeska by Wackenhut for each billing period were withheld until June 18, 1992. At that time Wackenhut produced the detailed bills and also Mercantile Credit's invoices to Wackenhut for credit reports obtained on Hamel, Scott, Lawn, Adams and Swift.

These bills and invoices were accompanied by a statement that they had been found in the Wackenhut dead record storage area. [Exhibit 12.] Wackenhut's General Counsel, Clark G. Redick, also informed the Committee that they were located in a sealed box containing records of cases unrelated to the Alyeska investigation and were found by employees reviewing the records of those unrelated cases. [Exhibit 165.] Redick did not explain how the bills came to be placed in the sealed box, who placed them there or why they were not included with the files transferred to the Paul, Hastings firm in April 1991.

While it is certainly possible that one of Wackenhut's copies of the bills could have been "misfiled," the Committee has difficulty understanding how all Wackenhut's copies, including the copies contained on its computer, were misplaced, lost or destroyed. Moreover, even accepting that such an unlikely "loss" occurred, it does not explain the simultaneous "loss" of the same documents by Alyeska.

It is clear that Black provided Wellington with copies of all the detailed bills. Wellington testified that he kept every document he received from Black in a locked cabinet behind his desk. [Exhibit 3, p. 408.] Wellington said he never destroyed or discarded any documents and maintained sole custody of them until he was directed to turn all documents over to Alyeska inhouse counsel, Lon Trotter, after the Owners shut down the investigation. [Exhibit 3, pp. 408–413.] He stated that he did, in fact, give all the documents to Trotter, whom he understood gave the documents to the Paul, Hastings firm representing the Owners. [Exhibit 3, pp. 420–413.] However, Leonard Janofsky, a senior partner in the firm, informed the Committee that the detailed bills were not among the documents his firm received from either Alyeska or Wackenhut. [Exhibit 116.] Whether last possessed by Wellington or by Trotter, Alyeska has offered no explanation for the "loss" of its copies of the detailed bills.

In the final analysis, the detailed bills produced to the Committee on June 18, 1992 provided no information about the covert operation itself which had not already been provided through previously produced documents. However, the bills do provide evidence that Alyeska was billed for and presumably paid for credit reports on Hamel and other individuals. Thus, any notion that Alyeska, and Wellington in particular, was unaware during the covert operation that Wackenhut was improperly obtaining credit reports is exposed in the bills as false.

Without an explanation for Alyeska's failure to produce the bills, and the "loss" or "misfiling" of all Wackenhut's copies, the Com-

mittee is left with the strong suspicion that they were "lost" in an effort to cover up the improperly obtained credit reports. Since this Committee's involvement in the investigation was not likely foreseen at that time, the coverup may have been aimed at concealing the information from Paul, Hastings and the Owners.

However, there are too many unanswered questions regarding the loss and the sudden reappearance of the bills for the Committee to reach any firm conclusion. The only thing that seems clear is that there is or was something in the bills that either Wackenhut or Alyeska, or both, did not want known.

In addition to the bills, neither Black nor Wackenhut produced Black's notes regarding the covert operation although the Committee has been informed that Black routinely kept extensive notes of all his investigative activities. Indeed, the list of files kept on the covert investigation indicates the existence of a file for Black's notes in that case. [Exhibit 13.] While the Committee received some notes written by Lund, it is unclear whether a complete set of Lund's notes were produced. The notes would presumably enable the Committee to determine the full extent of the covert operation, the techniques and equipment used, the persons targeted and the information gathered. The notes are particularly important in instances where the time records do not provide any detail, e.g., Black's trip to Anchorage in March 1990 and many of Black's telephone conversations with Hamel.

Neither Wackenhut nor Alyeska has been able to explain the disappearance of a book titled "Management Analysis Company book" as included on Wackenhut's list of the undercover files. [Exhibits 13, 144-155.] The Committee has been informed that the book may be a discussion of techniques used in dealing with "whistleblowers" and may describe some of the techniques used by the Wackenhut agents as well as shedding light on the focus of the covert investigation.

In addition, although Black instructed his employees to collate and index numerous newspaper articles "from Alaska," none were ever produced to the Committee. [Exhibit 195.] The articles may have revealed additional persons "targeted" in the covert operations.

Other documents which logic and some evidence suggest should have been in the Alyeska and/or Wackenhut files were also not produced, including but not limited to: "background" information on suspected "sources" See and Rotan as well as Lawn, Nye, DeLong, Ott, Steiner, Adams, Price Ahtna, Trustees for Alaska and Congressman Miller; memoranda to Wellington regarding Black's unrecorded conversations with Hamel; and a memorandum regarding Black's May 9, 1990 visit to Hamel's home. In combination with Black's and Lund's assertion at the hearing of their Fifth Amendment right not to testify, the missing documents represent a gaping hole in the evidence regarding the covert operation.

In addition, the documents which recently turned up in the Scott DOL case, while not substantively significant, represent physical proof that there are indeed additional documents from the files of the covert operation which have not been produced to the Committee. Alyeska and Wackenhut have provided no explanation whatever for the asserted "loss" of or failure to produce these docu-

ments. Without some plausible explanation, it is difficult to understand how all the above-referenced documents could have been lost or misplaced inadvertently. Again, the Committee is left with the troubling suspicion that additional documents have been withheld intentionally in order to conceal facts damaging to Wackenhut, Alyeska and/or its agents and employees.

Furthermore, some of Black's memoranda contain obsequious or self-serving statements which raise the suspicion that the documents may have been fabricated or altered. For example, in Black's June 5, 1990 memorandum describing his May 23, 1990 meeting with Wellington, Black wrote:

> It was obvious to all present that George Miller had a fine reputation as a long standing member of Congress. It was felt that Hamel may be puffing when he mentioned that he spoke with George Miller. It is probable that Hamel is only speaking with one of Miller's aides as he had told me originally during our first conversation by telephone.
>
> It was reiterated that our original directive in this investigation . . . was to investigate the theft of proprietary information from Alyeska. Proprietary information that is protected by Alyeska's standard operating procedure and internal non-disclosure agreements. Additionally, all agreed that we would focus on Hamel's allegations that he had illicit sources inside Alyeska's legal department which provided him some of the attorney client privilege information now in our hands as exhibits.

[Exhibit 64.]

This memorandum, addressed to "distribution," is inconsistent with the recollections of former Wackenhut SID employees who stated that Black told them his objective was to go after those whom he believed had received information from Hamel, including congressmen and their staff, as well as Hamel's sources. The memorandum is also inconsistent with Black's continued attempts to obtain admissions from Hamel regarding Congressman Miller and with the continual discussion of Congressman Miller at meetings from May through October 1990.

Black's statement in the memorandum that the attorney-client information is "now in our hands as exhibits" is particularly troubling. Black did not obtain the attorney-client documents from Hamel until August, thus suggesting that the memorandum could not have been written until after August 1990.

Any intentional failure to produce documents or any destruction, fabrication or alteration of documents subpoenaed by the Committee in this investigation is a violation of 18 U.S.C. section 1505, and a contempt of Congress under 2 U.S.C. section 192, which provides:

> Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, will-

fully makes default, or who having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1,000 nor less than $100 and imprisonment in a common jail for not less than one month nor more than twelve months.

THE OWNERS' KNOWLEDGE OF THE COVERT OPERATION

While it appears that most of the Owners were unaware until September 25–October 3, 1990 that Alyeska had undertaken a covert "sting" against Hamel, it is clear that one and perhaps two were aware substantially prior to that time. Steve Dietrich, then Alyeska's Vice President for Administration, was at Alyeska "on loan" from Exxon. Dietrich was Wellington's supervisor and was informed of the investigation from its inception. [Exhibit 190.] Dietrich returned to Exxon on April 28, 1990 and thus presumably was not informed of investigative activities which occurred after that date.

Warner told the Paul, Hastings attorneys that Dietrich informed him of the Hamel investigation over lunch in Houston on August 9, 1990. [Exhibit 196.] He said that Dietrich was "flustered and surprised" that Hermiller had not already discussed the investigation with the Owners because Dietrich understood that Hermiller planned to tell Garibaldi early in the investigation. [Exhibit 196.] According to Warner, he forgot about that conversation with Dietrich until he attended the September 25, 1990 meeting in Denver.

Hermiller apparently did inform Garibaldi in March 1990 that he had authorized an investigation of Hamel, although neither Hermiller nor Garibaldi could recall any details of the conversation.[202] [Appendix to hearing record, p. 619; exhibits 197, 198.] Garibaldi recalled one additional conversation with Hermiller which took place in Cleveland during August 1990. [Exhibits 197, 198.] Hermiller told him that Alyeska has some "encouraging" tapes of Hamel, but did not otherwise bring Garibaldi up to date on the investigation. [Exhibits 197, 198.] Garibaldi told Paul, Hastings and the other Owners that he understood Hermiller to mean that Alyeska had obtained videotapes of Hamel which had been recorded by someone else. He insisted he did not appreciate the significance of the investigation. [Exhibit 198; appendix to hearing record, p. 619.]

Nonetheless, Garibaldi apparently told Hermiller that he intended to inform G. Dunn, BP America's General Counsel, of the Hamel undercover operation. [Exhibit 197.] Although Garibaldi told Paul, Hastings that he did not inform Dunn, the fact that he considered advising BP's legal counsel suggests he understood that Alyeska had done more than simply obtain copies of someone else's tapes. [Exhibit 198.]

The extent of Garibaldi's knowledge was apparently disputed privately by Hermiller, who stated the evening before the October 3, 1990 Owners' meeting that he had informed Garibaldi "several"

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[202] Hermiller is a BP employee "on loan" to Alyeska and would naturally have a close working relationship with Garibaldi.

times. [Appendix to hearing record, p. 619.] Hermiller was said to be "very disappointed" that Garibaldi did not recall their conversations about the investigation. [Exhibit 196.] Garibaldi commented at the Denver meeting that "it would be a delicate matter between himself and Hermiller as to what Hermiller had told him." [Exhibit 196.]

While it is far from clear who knew what and when, it is unfathomable that an executive with Hermiller's experience and relationship with the chairman of the Owners' Committee would undertake a sensitive, potentially expensive and highly unusual private "sting" against Hamel without authorization, especially once it became apparent that Hamel was alleging close ties to government officials who regulate and oversee Alyeska and its Owners. The Committee does not doubt that Hermiller did inform Garibaldi, that he did explain the nature and purpose of the investigation and that Garibaldi, implicitly or explicitly, authorized him to go forward. However, once it became clear that the investigation had produced potentially damaging information and that the other Owners did not approve, Garibaldi claimed he did not "appreciate" what Hermiller had told him.

It is more reasonable to believe that Dietrich did not inform Exxon of the Hamel investigation. Dietrich was only involved in the initial stage of the operation and may not have anticipated the lengths to which Alyeska would ultimately go. He may have assumed Exxon would be informed soon after Hermiller first spoke to Garibaldi.

However, once Dietrich informed him on August 9, 1990, it is troubling that Warner simply "forgot" their conversation about the investigation. It is difficult to understand why Warner was not concerned about Alyeska's having undertaken a private undercover operation without the knowledge and approval of one of its principal owners and why he apparently made no effort to find out what was going on until he was summoned to a meeting six weeks later.

The Committee has no information indicating that any other Owner was or should have been aware of the undercover investigation. Once made aware, the Owners acted swiftly to end all surveillance activities.

THE OWNERS' TERMINATION OF THE COVERT OPERATION

At the hearing, Rusnack, Garibaldi and Warner testified that the Owners abruptly terminated the investigation and ordered that no information collected during the investigation be used for any purpose because they believed that the methods employed by the investigators were inconsistent with the Owners' business standards. [Hearing record, pp. 207, 216, 221, 230-31.] While the Committee has little reason to doubt the sincerity of that testimony, it appears that there was at least one additional reason.[203]

Rusnack testified that the Owners were concerned that they might have some legal obligation to report Hamel's allegations to

[203] After the Committee's November 1991 hearings, the Owners submitted a legal brief for the record which defended each of Wackenhut's investigative techniques. [Exhibit 180.] In view of the Owners' testimony and the fact that Wackenhut had its own counsel to undertake any defense it deemed necessary, the Committee questioned the Owners' motivation. [Exhibit 115.]

some authority. [Hearing record, p. 233.] Although Rusnack mentioned his concern regarding only Hamel's "comments concerning a Member of Congress," in fact, the Owners were also concerned about their need to report Hamel's allegations about pollution, corrosion and other health and safety violations. They hired the Paul, Hastings firm to prepare a legal opinion regarding their reporting obligations with respect to those issues. [Exhibits 110, 111.]

Although the firm advised that "some amount of internal investigation may be advisable, and necessary," it concluded that the Owners had no obligation to report the allegations to any authority if they determined that the allegations "are factually baseless" or "concern only past events which were previously investigated or reported." [Exhibit 110.] It is clear that the Owners considered many of Hamel's previous allegations to be factually accurate.[204] [Exhibit 106.] However, there is no evidence that either the Owners or Alyeska undertook to determine whether the videotapes contained new allegations or whether any of Hamel's allegations had been reported to the proper authorities.[205]

On the contrary, the Owners directed that the information obtained during the covert operation be sealed and delivered to Paul, Hastings and that it not be used for any purpose. As Garibaldi stated, public relations would be better served "by never knowing" what was in any of the videotapes. [Exhibit 93.] Alyeska apparently considered the information so damaging that it entertained the idea of destroying the evidence it paid Wackenhut to collect. [Exhibits 103, 104.]

By their own admissions, the Owners did not ask anyone to investigate or report the allegations to any government authority until it was clear that Wackenhut's videotapes and documents would be turned over to this Committee. [Exhibits 110, 199; Hearing record, pp. 237, 238, 250.] It thus appears that the desire to avoid investigating or reporting the allegations was a substantial factor in the Owners' termination of the covert operation.

Black apparently believed that the Owners were motivated by a desire to cover up the allegations of environmental wrongdoing. In his memorandum to "427 File," Black expressed his concern that the Owners had terminated the covert operation and "did not want transcripts or any details of HAMEL's allegations." [Appendix to hearing record, pp. 688–689.[206]] Black apparently feared that he and Wellington might have some obligation to disclose the pollution Hamel spoke about. "[E]ven if we complete and mail transcripts to Alyeska, Pat Wellington and I are the only ones who are holding the hot potato on this one." [Appendix to hearing record, p. 688.] He stated that the Florida law which prohibits private investi-

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[204] Wellington also believed that "some" of Hamel's facts were accurate. [Appendix to hearing record, p. 646.]

[205] Rusnack testified that with respect to one allegation affecting ARCO, "I gave no information to anyone . . . I simply checked into our own marine company about the allegation without referencing the source of the allegation . . ." He explained that "we have an environmental audit group which just happened to be doing an environmental audit of our marine [operations] at the time. I utilized that audit to direct information to find out about that." [Hearing record, p. 238.]

[206] The Committee is not certain when this memorandum was actually created. We note also that some statements in the memorandum are untrue and appear to have been added gratuitously, e.g., "[l]ong distance phone conversations to and from Florida were not recorded. . ."

gators from disclosing client information obtained during an investigation, might protect them from being forced to disclose any information learned during the covert operation. [Appendix to hearing record, p. 688.]

The Committee believes that the Owners should have fully investigated the information related to environmental wrongdoing and taken affirmative steps to protect the public from harm. Their failure to do so is an abrogation of their responsibilities under the law.

RECOMMENDATIONS

The investigative report, exhibits, and hearing record should be transmitted to:

1. The Department of Justice for consideration of criminal and/or civil prosecution of Alyeska and Wackenhut based upon their potential violation of federal laws prohibiting obstruction of justice, surreptitious recording, possession of surreptitious recording devices, mail and wire fraud and access to credit, financial and other private information. In particular, it is the Committee's intent that the Department of Justice focus on the Committee's findings that Alyeska and Wackenhut attempted to obstruct a congressional investigation in violation of 18 U.S.C. 1505 and may be in contempt of Congress under 2 U.S.C. section 192 for failure to produce documents under subpoena.

2. Appropriate authorities in the District of Columbia and the states of Alaska, Florida and Virginia for consideration of criminal and/or civil action against Alyeska and Wackenhut under state laws and regulations.

3. Alyeska and Wackenhut for consideration of management and operational changes in order to assure that this costly, embarrassing and reprehensible episode in their corporate history will not be repeated and that such covert spying operations will not be inflicted again on the Congress or the public.

4. The Alyeska owner companies (British Petroleum, Exxon, Aroc, Unocal, Mobil, Amerada Hess, and Phillips) along with the Committee's views that the owners: (a) provide additional public assurances that neither they or Alyeska will engage in a comparable covert operation; (b) take measures to increase their control over and responsibility for Alyeska's management, especially on environmental matters; (c) conduct an internal audit of Alyeska's operation of the Trans-Alaska Pipeline System (TAPS) and their own tanker fleet to take necessary steps to remedy any environmental or safety problems identified during the covert operation; and (d) take other appropriate initiatives to restore Congressional and public confidence in Alyeska and TAPS.

5. Appropriate State of Alaska and federal regulatory authorities, including the Environmental Protection Agency, the Department of Transportation, and the Department of the Interior, along with the Committee's views that they should: (a) substantially increase resources devoted to regulating Alyeska and TAPS; (b) conduct a comprehensive review of Alyeska's safety and environmental operations; and (c) take other initia-

tives to restore Congressional and public confidence in Alyeska and TAPS. In particular, the Secretary of the Interior and the other federal authorities are urged to exercise their powers under section 203(e) of the Trans-Alaska Pipeline Authorization Act to amend or modify the federal right-of-way agreement with Alyeska in order to assure improvements in TAPS and Alyeska's management conduct. The Committee considers it appropriate to take bold new initiatives such as maintaining offices and a full-time regulatory presence at the Alyeska terminal and having state and federal officials attend owner company meetings relating to Alyeska.

6. Appropriate Congressional Committees with jurisdiction over TAPS and Alyeska operations and/or an interest in the covert spying operation. In the wake of the *Exxon Valdez* oil spill disaster, the Administration's failure to adequately regulate TAPS, and Alyeska's outrageous attempt to silence its environmental critics using covert spying techniques, the Committee believes that Congress must be increasingly vigilant in its oversight of Alyeska and TAPS. In addition to hearings and further investigations of Alyeska's and its owner companies' safety and environmental records, the Committee strongly supports funding the Presidential Task Force on the Trans-Alaska Pipeline System. This Task Force, authorized by Title VIII of the Oil Pollution Act of 1990, is designed to increase federal and state regulative oversight over Alyseka and to conduct a comprehensive, independent audit of TAPS operations.

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